

AMENDING THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT

AUGUST 8, 1988.—Ordered to be printed

Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1523]

The Committee on the Judiciary, to which was referred the bill (S. 1523) amending the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. 1961 et seq.), having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. PURPOSE

Congress enacted the Racketeer Influenced and Corrupt Organizations Act (RICO) in 1970. It was designed primarily to be a potent criminal statute aimed at eradicating organized crime syndicates.

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To this end, RICO introduced several new concepts and broad remedies into the law. Eighteen years later, however, the meaning of many of these concepts and remedies is still unclear. Furthermore, the orderly development of the law has been interrupted by the filing of inappropriate actions by private parties under civil RICO. These actions include imaginative attempts to use RICO's treble damages remedy to leverage more favorable settlements in ordinary civil, even familial, disputes. The combined hammers of the "racketeer" label and possible treble damages relief have been too heavy for these cases. As a result, the law's development has been sidetracked by the courts' attempts to deal with the inappropriate use of civil RICO.

S. 1523 represents a fresh declaration of congressional policy with respect to RICO. The committee proposes to amend RICO to preserve and improve it as an effective tool in the fight against organized criminal conduct and white-collar crime prohibited by the statute, while reforming it to eliminate its past and possible future misuse in ordinary civil disputes.

II. LEGISLATIVE HISTORY

Congressional monitoring of RICO culminated in the introduction of reform legislation in the 99th Congress. The legislation took several different approaches. One approach would have premised a civil RICO suit for damages on the existence of a prior criminal conviction against the defendant. Another proposal would have prohibited the use of mail and wire fraud alone as predicate offenses.

Near the end of the 99th Congress, after extensive discussions, Senator Metzenbaum introduced S. 2907, a bill whose provisions are similar to those of S. 1523. Senator Metzenbaum offered an amendment to the continuing resolution on October 16, 1986, which was substantially the same as S. 2907 and which had passed the House of Representatives. The amendment was defeated by a narrow margin.

After further discussions, Senator Metzenbaum introduced S. 1523 on July 22, 1987.¹ The legislation introduced is similar to S. 2907 in most regards. It does contain, however, some alterations resulting from the continued discussions. Intense scrutiny of and discussion about this legislation continued up until committee markup. At that time, Senator Metzenbaum offered an amendment in the nature of a substitute to S. 1523, which contained further changes to the bill.

III. DISCUSSION

The provisions of S. 1523 may be divided into several sections. The central reform that the legislation effects relates to the potential damage recovery available to private parties under civil RICO. The other provisions address various matters related to bringing suit under RICO.

¹ Congressional Record (daily ed.), page S10501.

BACKGROUND

The RICO statute currently contains both criminal and civil remedies. Remedies available to the Government under criminal RICO include imprisonment, fine and forfeiture of property. A suit under civil RICO may be brought either by the Government or by a private person. Section 1962 defines the prohibited conduct for both criminal and civil RICO cases. Section 1962 is not amended by this legislation.²

POSSIBLE MONETARY RECOVERY

The principal approach of the legislation is to provide appropriate remedies for various types of civil RICO cases. In general, the purpose of these provisions is twofold: to facilitate the use of civil RICO by the Government and consumers who sustain injury due to organized criminal conduct or white-collar crime proscribed by RICO and to discourage the misuse of civil RICO in ordinary civil disputes. The committee does not want to impede the fight against genuine criminal conduct; instead, it intends that these RICO amendments will more precisely focus the fight.

Statistics from the 1985 Annual Report of the U.S. Attorney General estimate that white-collar crime costs Americans \$200 billion annually. Congressional Research Service Reports estimate, among other things, that: defense procurement fraud costs between \$23 to \$38 billion annually (memorandum dated May 15, 1986 by Jack Maskell, Legislative Attorney, American Law Division); bank fraud is the cause or a contributing cause in at least half of all bank failures (memorandum dated April 21, 1986 by Raymond Natter, Legislative Attorney, American Law Division); and health care fraud against the Federal Government may cost \$3.6 billion a year, or 5 percent of the Government's outlay for these programs.

Civil RICO helps fight the battle against criminal fraud and other criminal conduct committed through a pattern of illegal activity. The availability of a multiple damages recovery along with costs and fees enables both public and private victims to bring suits to recover compensation for their injuries. The existence of a multiple damages recovery available in both public and private cases also helps deter illegal conduct proscribed by RICO that is designed to achieve financial enrichment.

The bill divides potential plaintiffs and the amount they can recover into five categories. First, the bill authorizes governmental entities to sue under civil RICO and recover automatic treble damages, costs and a reasonable attorneys' fee. The committee determined not to change current law regarding the Government's recovery because of the dearth of abusive uses of civil RICO by the Government and public law enforcement officers' many positive uses of civil RICO. For example, the Federal Government has used civil RICO to recover losses sustained when banks fail due to a pattern of criminal fraud. Such bank failures have cost the Federal Deposit Insurance Corporation millions of dollars. Local governments, too, have successfully used civil RICO to redress millions of

² The standard of proof is "beyond a reasonable doubt" in a criminal RICO case and, except as expressly provided otherwise, "a preponderance of the evidence" in a civil RICO case.

dollars in losses sustained by the public treasury due to public assistance fraud, the bribery of public officials and arson-for-profit.

Second, the bill allows private persons to recover automatic treble damages, costs and a reasonable attorneys' fee if the defendant who engaged in the illegal conduct was convicted of a RICO violation or of a RICO predicate offense with respect to such conduct. Current remedies are also unchanged in these cases due to the judicially established existence, through the criminal conviction, of criminal behavior related to the civil suit.

Third, natural persons injured in connection with the purchase of lease of property for personal or noncommercial use or investment, or in connection with a contract for personal or noncommercial use or investment, are eligible to recover actual damages, costs and a reasonable attorneys' fee, as well as punitive damages up to twice the level of actual damages. The bill make these persons eligible to recover up to treble damages, costs and fees due to the lack of an effective multiple-damages federal fraud statute accessible to consumers.

Consumers, in the past, have relied on civil RICO to recover damages they sustained due to a pattern of criminal conduct. The conduct alleged by these consumers to violate civil RICO has involved fraud in connection with bank transactions and contracts for property, goods and services, among other things.

In general, this legislation preserves and facilitates the use of civil RICO by victims of a pattern of criminal fraud and the other predicate offenses listed in 18 U.S.C. 1961. The legislation creates an exception to this general rule when the victim is injured by securities or commodities fraud, unless the alleged conduct is insider trading. In cases involving insider trading, this section also provides certain entities, in addition to natural persons, the opportunity to rely on civil RICO for recovery of actual damages, costs, attorneys' fees and punitives damages up to twice the level of actual damages.

Fourth, persons suffering bodily injury by reason of a pattern of criminal conduct that includes a crime of violence are eligible to recover actual damages (excluding pain and suffering), costs, a reasonable attorneys' fee and punitive damages of up to twice actual damages. Crimes of violence are defined in paragraph (13) amending section 1964(c) and include the State law offenses of murder, kidnapping, arson and robbery. Also included are the federal offenses of loansharking, obstruction of justice, various drug-related offenses, arson, murder-for-hire and homicide. This category expands the potential recovery under civil RICO from business or property injury to personal injury in defined circumstances. The need for such an expansion is exemplified by instances in which law enforcement officials or other persons suffer personal injury in connection with a pattern of criminal conduct that includes a crime of violence. *See, e.g., Grogan v. Platt*, 835 F.2d 844 (11th Cir. 1988).

Fifth, persons not meeting the requirements of any of the other categories are eligible to recover actual damages, costs, and a reasonable attorneys' fee. Cases in this category have most often been the subject of the claim that civil RICO has been abused. For example, some ordinary civil disputes, not involving a pattern of crimi-

nal behavior, have been filed under civil RICO solely to leverage a more favorable settlement from the defendant. By detrebling the relief recoverable, this legislation is intended to reduce the inappropriate use of civil RICO. The committee does not intend, however, to abolish the ability to recover for a pattern of criminal fraud. The bill, therefore, retains an actual damages, costs and fees remedy for those who are injured by conduct prohibited by RICO.

Except when recovery under the bill would be restricted to actual damages, costs and fees under paragraph (2)(A), S. 1523 applies only to civil actions commenced after the date of enactment. Pending cases which would only be eligible for an actual damages, costs, and attorneys' fee recovery under paragraph (2)(A) of section 1964(c) had they been commenced after enactment of S. 1523 are, nevertheless, unaffected by the remedy provisions of the bill if one of the provisions of section 7 of the bill, subsection (b)(1), (2), or (3), applies.

OTHER ISSUES

The remaining provisions of the bill address several other issues related to civil RICO cases.

1. Burden of proof

With one exception, the bill codifies current law that the standard of proof in actions brought under civil RICO is "preponderance of the evidence." When punitive damages are recoverable, the plaintiff must prove "conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff" by "clear and convincing evidence."

2. Statute of limitations

Paragraph (6) amending section 1964(c) establishes a statute of limitations for public and private civil damage actions. Actions brought by the Attorney General or by an authorized legal officer of a federal, State or general local government entity must be commenced by the later of (1) 6 years after the cause of action accrues or (2) 4 years after the conduct causing injury terminates. All other civil damage actions must be brought by the latest of (1) 4 years after the cause of action accrues, (2) 4 years after the conduct causing injury to the plaintiff terminates, or (3) 2 years after a criminal conviction. In all cases, the statute of limitations does not run while a government civil or criminal case related to conduct alleged in the subsequent civil RICO case is pending.

3. Affirmative defense

The bill codifies an affirmative defense for all cases brought under section 1964(c). The affirmative defense, found in paragraph (7) of the amended section 1964(c), applies to cases in which the defendant acted in good faith and in reliance on an official, directly applicable regulatory action, approval, or interpretation of law by an authorized federal or State agency in writing or by application of law. The affirmative defense was carefully drafted to require that the agency action be bona fide. Thus, for example, in an action against an organized crime family alleged to have committed a pat-

tern of criminal conduct relating to gambling, action by the local gambling control authority may satisfy the requirements of the affirmative defense only if the agency's action was official, bona fide and not the result of infiltration or subversion of the regulatory process.

The bill establishes a procedure by which parties may receive an early and fair determination of the availability of the affirmative defense. Upon a defendant's motion, and after adequate discovery on the defense as allowed by law or rule of procedure, the court shall determine the availability of the affirmative defense. This determination shall occur before the commencement of full discovery on and consideration of the plaintiff's claim. The court should implement the provisions of this section in accordance with the Federal Rules of Civil Procedure.

4. Bifurcation

In suits in which punitive damages are available, the bill provides that evidence only relevant to the amount of punitive damages to be awarded shall be presented after a finding of liability. This sequence for presenting evidence may, however, be altered in appropriate cases. Upon motion of a party, or in the exercise of the court's discretion, the court may permit earlier introduction of such evidence for good cause and in the absence of any undue prejudice to the defendant.

5. Pleading with particularity

Paragraph (9) amending section 1964(c) requires that facts supporting the claim against each defendant be averred with particularity. While Rule 9 of the Federal Rules of Civil Procedure already requires particularity when pleading fraud cases, this provision makes the requirement uniform for all civil RICO damage actions, whether or not fraud is involved.

6. Abatement and survivability

Paragraph 11 amending section 1964(c) provides that an action for damages shall survive the death of the plaintiff or defendant. In the case of bankruptcy, the action shall survive and be enforceable against a receiver in bankruptcy. Multiple damages cannot be assessed against a receiver in bankruptcy, however.

7. Racketeer label

Paragraph (12) amending section 1964(c) addresses the use of the term "racketeer" in civil suits not containing an allegation of a crime of violence predicate act.³ Instead of the phrase "racketeering activity," "unlawful activity" would be used in these cases. Instead of "pattern of racketeering activity," the phrase "pattern of unlawful activity" is substituted. The bill does not change the nomenclature used in criminal RICO suits.

³ The crimes of violence are defined in paragraph (13) of amended section 1964(c).

8. Increased penalties for certain offenses

Section 3 of the bill conforms the criminal fine available for violations of section 1962 to the general fine provision of title 18, and permits imprisonment for life if the defendant is convicted of a predicate offense that carries a maximum penalty of life.

9. Predicate acts

Section 4 of the bill adds several predicate offenses to section 1961(1). They include: prostitution involving minors, arson, destruction of aircraft, credit card fraud, murder-for-hire, homicide of a federal official, obstruction of justice, the illegal possession of machine guns and sexual exploitation of children. These offenses were added so that RICO would be a more effective tool to combat patterns of terrorism, organized crime, illegal drug trafficking and white-collar crime.

10. International service of process

Section 5 of the bill amends section 1965 to provide for international service of process related both to parties and witnesses. This amendment would facilitate the use of civil RICO against international terrorism.

11. Exclusive federal jurisdiction

Section 6 provides that all RICO cases must be brought in federal court.

These provisions apply only to cases commenced after the date of enactment.

IV. VOTE OF THE COMMITTEE

On May 24, 1988, with a quorum present, by recorded vote of 11 to 0, the Committee on the Judiciary ordered the bill favorably reported. The members of the committee voting were:

YEAS

Senator Kennedy
Senator Metzenbaum
Senator DeConcini
Senator Leahy
Senator Heflin
Senator Simon
Senator Thurmond
Senator Hatch
Senator Simpson
Senator Grassley
Senator Humphrey

NAYS

During committee consideration of the bill, which began on May 12, 1988, five amendments were offered on three subjects.

SMALL INVESTOR PROVISION AMENDMENT

Senator DeConcini, on behalf of himself, Senator Leahy, and Senator Hatch, offered an amendment to delete from the bill the provi-

sions pertaining to special treatment for small investors. The amendment was accepted by the record vote of 10 to 2.

YEAS

Senator Kennedy
 Senator DeConcini
 Senator Leahy
 Senator Heflin
 Senator Thurmond
 Senator Hatch
 Senator Simpson
 Senator Grassley
 Senator Specter
 Senator Humphrey

NAYS

Senator Metzenbaum
 Senator Simon

FIREARMS PREDICATE OFFENSES

Senator DeConcini also offered an amendment to strike the inclusion of several firearms violations as predicate offenses under section 1961(1).⁴

The committee adjourned on May 12 before voting on this DeConcini amendment. Before the next executive session on May 24, the committee held a hearing on the question of whether the firearms offenses should be added to RICO's predicate offenses. This hearing was held after Senator Specter pointed out that the inclusion of these violations as predicate offenses had never been the subject of analysis at a hearing.

The final vote on the DeConcini amendment occurred on May 24. Senator Metzenbaum's request to divide the amendment into four parts was granted. The committee approved by a 6-to-4 vote each provision of the DeConcini amendment, which proposed to delete sections 922(d), (h), (i), and (j), and section 924(b) of title 18.

YEAS

Senator DeConcini
 Senator Leahy
 Senator Heflin
 Senator Hatch
 Senator Simpson
 Senator Grassley

NAYS

Senator Kennedy
 Senator Metzenbaum
 Senator Simon
 Senator Thurmond

A final vote was then taken on the individual DeConcini amendment. The vote was 8 to 3.

YEAS

Senator DeConcini
 Senator Leahy
 Senator Heflin
 Senator Thurmond
 Senator Hatch
 Senator Simpson
 Senator Grassley
 Senator Humphrey

NAYS

Senator Kennedy
 Senator Metzenbaum
 Senator Simon

⁴ The firearms offenses listed in Senator DeConcini's amendment were: 18 U.S.C. sections 922(d), (h), (i), and (j), and 18 U.S.C. section 924(b).

EFFECTIVE DATE

Three Senators offered amendments to change the effective date provision in the bill.

Senator Simon offered an amendment which would preclude the bill's application to any civil action commenced prior to the day the bill was introduced, July 22, 1987. The amendment was defeated by a vote of 3 to 7.

YEAS

Senator Kennedy
Senator Metzenbaum
Senator Simon

NAYS

Senator DeConcini
Senator Leahy
Senator Heflin
Senator Thurmond
Senator Hatch
Senator Grassley
Senator Humphrey

Senator DeConcini also offered an amendment modifying the effective date provision of the bill. The amendment provided that it would be "clearly unjust" to apply the bill to a pending suit if any person, in connection with the pending suit, was criminally convicted of a predicate offense or of a RICO violation. The vote, by a show of hands, was 1 to 7 against passage of the amendment.

Senator Simpson offered an amendment specifying that the existence of a criminal conviction on a predicate offense under 18 U.S.C. 1961(1) against any defendant in the pending civil RICO case may be considered by a judge making a determination under the "clearly unjust" standard. The amendment was defeated by a vote of 2 to 8.

YEAS

Senator Simon
Senator Simpson

NAYS

Senator Kennedy
Senator DeConcini
Senator Leahy
Senator Heflin
Senator Thurmond
Senator Hatch
Senator Grassley
Senator Humphrey

V. TEXT OF S. 1523 AS AMENDED

A BILL To amend chapter 96 of title 18, United States Code

SECTION 1. BURDEN OF PROOF.

Section 1964(a) of title 18, United States Code, is amended by inserting after "of this chapter by issuing" the following: ", upon proof by a preponderance of the evidence,".

SEC. 2. CIVIL RECOVERY.

Subsection (c) of section 1964 of title 18, United States Code, is amended to read as follows:

"(c)(1)(A) A governmental entity, excluding a unit of local government other than a unit of general local government, whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action therefore and, upon proof by a preponderance of the evidence, shall recover threefold the actual damages to the business or property of the governmental entity sustained by reason of such violation, and the costs of the civil action, including a reasonable attorney's fee.

"(B) A civil action under subparagraph (A) of this paragraph must be brought by—

"(i) the Attorney General or other legal officer authorized to sue, if the injury is to the business or property of the United States;

"(ii) the chief legal officer of a State, if the injury is to the business or property of the State;

"(iii) the chief legal officer, or other legal officer authorized to sue, of a unit of general local government of a State, if the injury is to the business or property of the unit of general local government; or

"(iv) the court-appointed trustee, if the injury is to the business or property of an enterprise for which a trustee has been appointed by a United States district court under section 1964(a) of this title.

"(2) A person whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action therefore and, upon proof by a preponderance of the evidence, shall recover—

"(A) the actual damages to the person's business or property sustained by reason of such violation, and the costs of the civil action, including a reasonable attorney's fee; and

"(B) punitive damages of up to twice the actual damages, if—

"(i)(I) the person whose business or property is injured is a unit of local government other than a unit of general local government; and

"(II) the plaintiff proves by clear and convincing evidence that the defendant acted in conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff;

"(ii)(I) the person whose business or property is injured is a natural person, or an organization meeting the definition of exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(3)), an organization meeting the definition of an indenture trustee under the Trust Indenture Act of 1939 (15 U.S.C. 77jjj et seq.), an organization meeting the definition of a pension fund under the Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.), or an organization meeting the definition of an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

"(II) the person is injured by conduct proscribed by section 21(d)(2)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)(A)), subject to the condition that the calculation of punitive damages shall be consistent with section

21(d)(2)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)(C), and that the assessment of punitive damages against a person employing another person who is liable under this clause shall be consistent with section 21(d)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)(B)); and

“(III) the plaintiff proves by clear and convincing evidence that the defendant acted in conscious and wanton disregard of the consequences of the defendant’s actions to the plaintiff; or

“(iii)(I) the person whose business or property is injured is a natural person and the injury occurred in connection with a purchase or lease, for personal or noncommercial use or investment, of a product, service, investment, or other property, or a contract for personal or noncommercial use or investment;

“(II) neither State nor Federal securities or commodities laws make available an express or implied remedy for the type of behavior on which the claim of the plaintiff is based; and

“(III) the plaintiff proves by clear and convincing evidence that the defendant acted in conscious and wanton disregard of the consequences of the defendant’s actions to the plaintiff.

“(3) In a civil action involving a claim for punitive damages under paragraph (2)(B) of this subsection, the trier of fact, in determining the amount of punitive damages, shall consider—

“(A) the degree of culpability of the defendant;

“(B) the degree of disparity in the bargaining positions of the plaintiff and the defendant;

“(C) any history of similar conduct by the defendant;

“(D) the benefits derived from the unlawful conduct by the defendant;

“(E) the number of persons victimized;

“(F) any prior decision by a court or State or Federal agency as to whether the defendant’s conduct giving rise to the action violated applicable law or constituted bad faith;

“(G) the extent to which the class action aspect of the compensatory damage award fulfills the deterrent function of punitive damages; and

“(H) any other factor the court deems to be an equitable consideration bearing on the appropriate amount of punitive damages.

“(4) A person who suffers bodily injury by reason of any conduct in violation of section 1962 of this title that includes a crime of violence as a predicate act may bring a civil action in an appropriate United States district court, and, upon proof by a preponderance of the evidence, shall, as allowed under applicable State law, recover the actual damages sustained by reason of such violation (excluding pain and suffering) and punitive damages of up to twice the actual damages, as well as the costs of the civil action, including a reasonable attorney’s fee.

“(5) A person whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate

United States district court, a civil action therefore and, upon proof by a preponderance of the evidence, shall recover threefold the actual damages to the person's business or property sustained by reason of such violation, and the costs of the civil action, including a reasonable attorney's fee, if the person who engaged in the conduct was, with respect to such conduct, convicted of a racketeering activity or of a violation of section 1962 of this title.

"(6)(A) Except as provided in subparagraph (B), a civil action under this subsection may not be commenced after the latest of—

"(i) four years after the date the cause of action accrues;

"(ii) four years after the conduct causing injury to the plaintiff terminates; or

"(iii) two years after the date of the criminal conviction required for an action under paragraph (5) of this subsection.

"(B) A civil action brought pursuant to subsection (c)(1)(B)(i), (ii), or (iii) may not be commenced after the latest of—

"(i) six years after the date the cause of action accrues; or

"(ii) four years after the conduct causing injury terminates.

"(C) The period of limitation provided in subparagraphs (A) and (B) of this paragraph on a cause of action does not run during the pendency of a government civil action or criminal case relating to the conduct upon which such cause of action is based.

"(7) It shall be an affirmative defense to an action brought under this subsection that the defendant acted in good faith and in reliance upon an official, directly applicable regulatory action, approval, or interpretation of law by an authorized Federal or State agency in writing or by operation of law. Before the commencement of full discovery on and consideration of the plaintiff's claim, the court shall determine, upon defendant's motion, the availability of any affirmative defense asserted under this paragraph, provided that discovery of such defense shall be allowed, as provided by law or rule of procedure, prior to the court's determination.

"(8) In an action under this subsection, evidence relevant only to the amount of punitive damages shall not be introduced until after a finding of liability, except the court may permit, for good cause shown and in the absence of any undue prejudice to the defendant, introduction of such evidence prior to a finding of liability on motion of a party or in the exercise of its discretion.

"(9) In an action under this subsection, facts supporting the claim against each defendant shall be averred with particularity.

"(10) As used in this subsection:

"(A) The term 'governmental entity' means the United States or a State, and includes any department, agency, or government corporation of the United States or a State, any political subdivision of a State, and any enterprise for which a trustee has been appointed by a United States district court under section 1964(a) of this title (but only during the tenure of such trustee).

"(B) The term 'charitable corporation' means a charitable corporation formed under section 501(c)(3) of the Internal Revenue Code of 1986 or a corporation formed under section 501(c)(14)(B) of the Internal Revenue Code of 1986.

"(11)(A) An action or proceeding under this subsection shall not abate on the death of the plaintiff or defendant, but shall survive

and be enforceable by and against his estate and by and against surviving plaintiffs or defendants.

"(B) An action or proceeding under this subsection shall survive and be enforceable against a receiver in bankruptcy but only to the extent of actual damages or other relief.

"(12) In a civil action under this subsection in which the complaint does not allege a crime of violence as a predicate act—

"(A) the term 'racketeer' shall not be used in referring to any party; and

"(B) the terms used to define conduct in violation of section 1962 of this title shall be referred to as follows:

"(i) 'racketeering activity' as defined in section 1961(1), shall be referred to as 'unlawful activity'; and

"(ii) 'pattern of racketeering activity', as defined in section 1961(5), shall be referred to as 'pattern of unlawful activity.'

"(13) In a civil action under this subsection in which the complaint alleges a crime of violence, the predicate acts constituting a crime of violence within the meaning of this subsection are offenses involving—

"(A) when chargeable under State law the following; murder, kidnapping, arson, or robbery;

"(B) when accompanied by bodily injury the following: extortion as defined by section 1951 of title 18; loansharking and other extortionate credit transactions as defined by sections 891-894 of title 18; obstruction of justice as defined in chapter 73 of title 18; the felonious manufacturer, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States; or sexual exploitation of children as defined by chapter 110 of title 18; or

"(C) destruction of aircraft or aircraft facilities as defined by section 32 of title 18; arson as defined by section 81 of title 18; murder-for-hire as defined by section 1952A of title 18; or homicide as defined by chapter 51, of title 18."

SEC. 3. INCREASED PENALTIES FOR HOMICIDE AND MAIMING.

Section 1963(a) of title 18, United States Code, is amended by striking "shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both" and inserting "shall be fined under this title and imprisoned for not more than twenty years (or for life, if the violation is predicated on an offense for which the maximum penalty includes life in prison), or both".

SEC. 4. ADDITIONAL PREDICATE OFFENSES.

Section 1961(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting "prostitution involving minors," after "extortion,";

(2) in subparagraph (B), by—

(A) striking "Section 201" and inserting "Section 32 (relating to destruction of aircraft or aircraft facilities), section 81 (relating to arson), section 201";

(B) inserting before “, section 1084” the following: “, section 1029 (relating to fraud and related activity in connection with access devices),”;

(C) inserting before “, section 1953” the following: “, section 1952A (relating to murder-for-hire)”;

(D) inserting before “, section 2320” the following: “, section 2318 (relating to counterfeit materials)” and

(E) inserting before “, (C)” the following: “, and chapter 51 (relating to homicide), chapter 73 (relating to obstruction of justice), and chapter 110 (relating to sexual exploitation of children)”;

(3) by striking “or” before “(E)”;

(4) by striking the semicolon at the end thereof and inserting a comma; and

(5) by adding at the end thereof the following: “(F) section 134 of the Truth in Lending Act, or (G) section 5861 of title 26 (relating to firearms control);”.

SEC. 5. FEDERAL JURISDICTION.

Section 1965 of title 18, United States Code, is amended—

(1) in subsection (b) by striking “residing in any other district”;

(2) in subsection (b) by striking “in any judicial district of the United States by the marshal thereof.” and inserting “anywhere the party may be found.”;

(3) in subsection (c) by striking “in any other judicial district” and inserting “anywhere the witness is found”;

(4) in subsection (c) by striking “in another district”; and

(5) in subsection (d) by striking “in any judicial district in which” and inserting “where”.

SEC. 6. STATE JURISDICTION.

Chapter 96 of title 18, United States Code, shall not be construed to confer jurisdiction to hear a criminal or civil proceeding or action under its provisions on a judicial or other forum of a State or local unit of government.

SEC. 7. EFFECTIVE DATE.

(a) GENERAL RULE.—The amendments made by this Act shall apply to any civil action commenced after the date of enactment.

(b) EXCEPTION.—In any pending action under section 1964(c) of title 18, United States Code, in which a person would be eligible to recover only under paragraph (2)(A) of section 1964(c) as amended by this Act because the person does not meet the requirements of either paragraph (2)(B)(i)(I), paragraph (2)(B)(ii), or paragraphs (2)(B)(iii) (I) and (II) of section 1964(c), if this Act had been enacted before the commencement of that action, the recovery of that person shall be limited to the recovery provided under such paragraph (2)(A), unless in the pending action—

(1) there has been a jury verdict or district court judgment, establishing the defendant’s liability, or settlement has occurred;

(2) the plaintiff is a charitable corporation; or

(3) the court determines that, in light of all the circumstances, such limitation of recovery would be clearly unjust.

VI. SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 codifies current law that the standard of proof for the issuance of equitable relief under 1964(a) is a "preponderance of the evidence."

Section 2

Section 2 amends subsection (c) of section 1964.

Subsection (c)(1) relates to civil suits for monetary relief brought by various units of government. Subparagraph (A) specifically authorizes the Government to sue under civil RICO for monetary damages. All entities meeting the definition of "governmental entity," besides units of local government other than units of general local government, are able to recover automatic treble damages, costs and attorneys' fees.⁵ Such entities include all federal and State governmental bodies, all units of general local government and trustees appointed by the court under section 1964(a).⁶ A "unit of general local government" is any general purpose political subdivision of a state which has the power to levy taxes and spend funds, as well as general corporate and police powers. Subparagraph (A) codifies current law that the standard of proof in a government civil case is a "preponderance of the evidence." The text of subparagraph (A) is derived from the current section 1964(c). Thus, the subparagraph is not meant to alter current rules regarding standing, injury or remedies.

Subparagraph (B) specifies who must bring the civil action under subparagraph (A) in four circumstances. If the injury is to the business or property of the United States, the Attorney General or other legal officer authorized to sue must bring the suit. If the injury is to the business or property of a state or a unit of general local government, the chief legal officer of the state or a legal officer authorized to sue should bring the suit. The bill itself does not grant a legal officer authority to sue. Instead, reference must be found elsewhere granting a legal officer general authority to sue on behalf of the entity in question. The authorization need not make specific reference to bringing suit under civil RICO. If a legal officer is currently authorized to bring suit on any matter, it would be qualified to bring suit under civil RICO as well. The bill thus preserves the automatic treble damages, costs and fees remedy available to the government. Finally, if the injury is to an enterprise for which a trustee has been appointed under 18 U.S.C. 1964(a), the trustee shall bring the suit.

Subsection (c)(2) addresses actions under civil RICO by private persons and units of local government other than units of general local government. This section codifies current law that the standard of proof in civil RICO cases is a "preponderance of the evidence," except as otherwise provided.⁷

⁵ Units of local government other than units of general local government recover under subsection (c)(2)(B)(i)(I).

⁶ The definition of "governmental entity" is found in subsection (c)(10)(A).

⁷ The committee considered alternative methods of reforming civil RICO, including making civil RICO claims arbitrable under the United States Arbitration Act. 9 U.S.C. 1, et seq. The committee rejected these options.

Subparagraph (A) makes each plaintiff suing under civil RICO eligible to recover actual damages, costs and a reasonable attorneys' fees. Plaintiffs only eligible to recover under subparagraph (A) would not be able to recover a multiple of their actual damages. These plaintiffs' potential recovery has been detrebled because, on occasion, civil RICO has been misused by persons within this category. Civil RICO has been inappropriately invoked by plaintiffs in this category to remedy injuries in ordinary civil disputes that is, ones not involving criminal fraud or other criminal conduct prohibited by the statute. The specter of automatic treble damages and the "racketeer" label have been misused in these ordinary civil disputes to leverage a quicker and larger settlement. This has been unfair to defendants. In addition, the misuse of civil RICO has placed an inappropriate burden on the courts.

It is anticipated that detrebling the potential damages in these cases will reduce the misuse of civil RICO. Civil RICO should, however, remain available to victims of a pattern of criminal fraud or a pattern of other criminal conduct who only fit in this category, and the courts should not be reluctant to apply civil RICO in such cases. It is for this reason that an actual damages, costs and fees remedy remains available to all plaintiffs under the bill. The ability to recover costs and attorneys' fees in addition to actual damages will help ensure that meritorious suits in this category go forward.

Subparagraph (B) allows, in three circumstances, the recovery of punitive damages of up to twice actual damages in addition to actual damages, costs and fees.⁸ First, a unit of local government other than a unit of general local government is eligible to recover under this subparagraph if the defendant acted in "conscious and wanton disregard of the consequences of its actions to the plaintiff." This standard was not taken directly from any statute or judicial decision.

Behavior that is in "conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff"⁹ involves conduct that is more egregious than mere civil recklessness so as to amount to aggravated misconduct.¹⁰ To the extent consistent with this standard, the committee cites with approval the definition of conduct which merits an award of punitive damages articulated in the following cases: *Wedeman v. City Chevrolet Co.*, 366 A.2d 7 (Md. 1976); *Norman's Heritage Real Estate Co. v. Aetna Casualty and Surety Co.*, 727 F.2d 911 (10th Cir. 1984); *Wangen v. Ford Motor Co.*, 294 N.W.2d 437 (Wis. 1980); and *Peel v. American Fidelity Assurance Co.*, 680 F.2d 374 (5th Cir. 1982).

The plaintiff must prove "conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff" by "clear and convincing evidence." All other elements of the plaintiff's case

⁸ The characterization of these damages as "punitive damages" is not intended to expand or contract the availability of any respondent superior or other form of vicarious liability under RICO.

⁹ The phrase "to the plaintiff" does not require that the "conscious and wanton disregard of the consequences of the defendant's actions" be directed towards a specific person. It is sufficient that the defendant have acted with "conscious and wanton disregard of the consequences of the defendant's actions" to a set of persons that includes the plaintiff.

¹⁰ This standard only applies when the plaintiff is seeking punitive damages. It is different from, and is not intended to alter, the proof of the underlying RICO violation.

must be proven by the regular civil standard of "preponderance of the evidence." All other elements of the plaintiff's case must be proven by the regular civil standard of "preponderance of the evidence."

Second, a nature person, an organization meeting the definition of an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, an organization meeting the definition of an indenture trustee under the Trust Indenture Act of 1939, an organization meeting the definition of a pension fund under the Employee Retirement Security Act, and an organization meeting the definition of an investment company under the Investment Company Act of 1940 are eligible to recover in certain circumstances up to twice the level of actual damages in punitive damages, in addition to actual damages, costs and fees. These circumstances exist when the eligible person is injured by conduct proscribed by 15 U.S.C. 78u(d)(2)(A) and proves "conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff" by "clear and convincing evidence."¹¹ The analysis of the "conscious and wanton disregard" standard set forth above applies equally in these cases.

The bill provides that the calculation of punitive damages be consistent with 15 U.S.C. 78u(d)(2)(C) and that the assessment of punitive damages against a person whose liability exists only because of employing another person who is liable be consistent with 15 U.S.C. 78u(d)(2)(B). Other than this provision,¹² the committee does not intend this legislation to affect the nature, extent, or application of any respondeat superior or other form of vicarious liability under RICO.

This part of subparagraph (B) permits persons who are not natural persons to recover more than actual damages under civil RICO because of the conduct involved. In the wake of the numerous recent insider trading scandals, the committee wanted to preserve the use of civil RICO to obtain relief for insider trading. The organizations eligible for multiple damages relief against insider trading invest in the stock market as surrogates for individuals.

Third, natural persons whose business or property is injured in connection with a purchase or lease of a product, service, investment or other property for personal or noncommercial use or investment, or in connection with a contract for personal or noncommercial use or investment, are also eligible to recover more than actual damages, costs and fees. When State or federal securities or commodities laws make available an express or implied remedy for the type of behavior on which the claim of the plaintiff is based, the plaintiff is not, however, eligible to recover punitive damages under this subparagraph.¹³ The term "commodities laws" means any state or federal statute which exclusively covers instruments under the jurisdiction of the Commodity Exchange Act, as amended. It does not, therefore, include a statute of general commercial

¹¹ The committee does not intend to address the definition of conduct proscribed by the Insider Trading Sanctions Act of 1984, 15 U.S.C. 78u(2)(A).

¹² Furthermore, this provision has no effect in cases not involving insider trading.

¹³ While the committee leaves the specific application of this exemption to the courts, plaintiffs cannot evade this exemption by failing to plead claims or seek remedies they have under these laws.

application, like a Uniform Commercial Code. As in the two other categories under this subparagraph, there must be "clear and convincing evidence" of "conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff" for a recovery of punitive damages. (See *supra*, for the meaning of this standard.)

Consumers have always been able to invoke civil RICO to recover injuries due to a pattern of criminal fraud. However, some commentators have argued that civil RICO was never intended to be used as a federal consumer fraud remedy. Subsection (c)(2)(B)(iii) of the bill makes clear that civil RICO may be applied to consumer fraud. This part of the bill conveys the committee's belief that civil RICO, particularly with its predicate acts of mail and wire fraud, is an important remedy for consumers.¹⁴ Furthermore, by making multiple damages, costs and attorneys' fees available to consumers under civil RICO, the committee intends to facilitate consumers' use of the legislation.¹⁵ The committee hopes that the authorization of consumer civil RICO suits will provide relief to Americans across the country who are victimized by a pattern of criminal fraud or other criminal conduct.

Subsection (c)(3) contains a list of eight factors to be considered by the trier of fact in determining the amount of punitive damages. There need not be evidence on each factor for the finder of fact to award punitive damages. Factor (H) gives the court discretion to instruct the fact finder to weigh other equitable considerations in determining the amount of punitive damages.

Subsection (c)(4) of the bill is a special provision for persons who suffer bodily injury due to a RICO violation. Heretofore, losses other than injury to business or property have not been compensable under civil RICO. Other losses, however, do occur. For example, law enforcement officials are in constant physical danger on their jobs and may suffer injury due to a RICO violation. See e.g., *Grogan v. Platt*, 835 F.2d 844 (11th Cir. 1988). Subsection (c)(4) eliminates, in certain cases, the bar to recovery for bodily harm and permits recovery of up to twice the amount of actual damages in punitive damages, in addition to actual damages, costs and fees. Consistent with other provisions in the bill, the bill codifies current

¹⁴ Bringing suit in State court under a common-law fraud theory does not always provide an adequate remedy for consumer fraud. A suit based on common-law fraud does not compensate a victim for the costs of bringing suit or for attorneys' fees. The deficiencies of the common law fraud remedy do not exist under civil RICO.

¹⁵ Since its enactment, there has been considerable debate over the appropriate scope of civil liability under 18 U.S.C. 1962 *et seq.* Moreover, specific concerns have been raised that liability for producing or marketing a defective product could be increased due to the existence of a private multiple damage cause of action under section 1964(c). As in all situations subject to suit under this statute, claims of this type brought pursuant to section 1964(c) must involve allegations, and ultimately proof, of the requisite intent and pattern of criminal behavior, in addition to the other elements of a cause of action necessary to prove a violation of section 1962.

In an action for damages to a person's business or property based on alleged defective manufacture or design of a product or alleged misrepresentation or failure to warn of a product defect, this statute neither displaces nor supplants existing state or federal causes of action based on tort or contract law, such as product liability, breach of warranty, misrepresentation, or civil fraud causes of action. For example, if a manufacturer designs, manufactures, or markets a product or a component part to another product or system, and during the period of time the product was in interstate commerce it caused damage to a person's business or property, the manufacturer would, of course, remain subject to civil liability to that person under theories of tort or contract law, but would not be liable under section 1964(c) without proof of the requisite intent and pattern of criminal behavior.

law that a plaintiff must prove its case by a "preponderance of the evidence."

The damages recoverable under subsection (c)(4) are subject to several stipulations. First, the conduct violative of section 1962 must include a crime of violence as a predicate act.¹⁶ Second, the bill refers to state law for a definition of those actual damages that are recoverable; the bill provides, however, that pain and suffering are never compensable. The identification of the state law that applies in determining recoverable damage should be made in the same way as any other choice of law issue.

Subsection (c)(5) provides for automatic treble damages recovery, in addition to costs and fees, when a defendant in a civil RICO suit has been previously convicted of a predicate offense or a violation of section 1962. The conviction must be against the defendant in the civil suit and the conviction must be for a predicate offense or a violation of section 1962. Subsection (c)(5) also codifies current law that the burden of proof in such a civil RICO suit is "a preponderance of the evidence."

Subsection (c)(6) establishes for the first time a statutory statute of limitations for civil RICO damage cases.¹⁷ There are two different limitations periods. The first is contained in subparagraph (A) and is a general limitations period. It provides that a civil action may not be commenced after the latest of: (1) 4 years after the date the cause of action accrues; (2) 4 years after the conduct causing injury to the plaintiff terminates; or (3) 2 years after the criminal conviction needed for an action under subsection (c)(5).

The second limitations period is contained in subparagraph (B). It applies to actions brought by the Attorney General, other legal officer authorized to sue on behalf of the United States, the chief legal officer of a State, or the chief legal officer or other legal officer authorized to sue on behalf of a unit of general local government. These actions may not be commenced after the later of (1) 6 years after the date the cause of action accrues; or (2) 4 years after the conduct causing injury terminates.

Subparagraph (C) provides that these limitations periods do not run while a government civil action or criminal case related to the conduct alleged in the subsection (c) case is pending. The general rule that the limitations period does not run during a period of fraudulent concealment also applies.

Subsection (c)(7) establishes a statutory affirmative defense for actions under subsection (c). The affirmative defense applies if the defendant acted in good faith and in reliance upon an official, directly applicable regulatory action, approval or interpretation of law by an authorized federal or State agency in writing or by operation of law. This subsection was carefully phrased to cover only a defendant's good-faith conduct and its reliance on a bona fide, directly applicable federal or State agency's regulatory conduct. Changes were made to the affirmative defense as originally drafted in response to concerns expressed by the Department of Justice. The department was concerned that defendants not be able to use

¹⁶ The crime of violence predicate offenses are listed in subsection (c)(13).

¹⁷ The bill does not address the limitations period for criminal RICO cases or for civil RICO cases not seeking damages.

the affirmative defense when they had procured the agency's action by infiltration or subversion of the regulatory process. Thus, the committee added to the "good faith" requirement the specification that the Agency's conduct must be "in writing or by operation of law."

Subsection (c)(7) also provides for early determination of the availability of the affirmative defense should a defendant so request. Thus, upon defendant's motion, the court shall determine the availability of the affirmative defense before the commencement of full discovery on and consideration of the plaintiff's claim. In fairness to all parties, discovery relating to the defense must be allowed, as necessary, before the court makes a ruling on the availability of the affirmative defense. The court's implementation of this subsection must conform to applicable laws and procedural rules.

Subsection (c)(8) applies to civil RICO actions when the plaintiff is eligible to recover punitive damages. In these cases, the general rule is that evidence solely relevant to subsection (c)(3), the amount of punitive damages, shall not be introduced until after a finding of liability. Nevertheless, in certain circumstances, bifurcation would be inappropriate. Therefore, subsection (c)(8) also allows the court to permit the introduction of this evidence at an earlier time for good cause shown and in the absence of any undue prejudice to the defendant. The question whether it is appropriate to forego bifurcation in a particular case may be raised by motion of a party or by the court in the exercise of its discretion.

Subsection (c)(9) requires that facts supporting the claim against each defendant be averred with particularity. Currently, rule 9 of the Federal Rules of Civil Procedure provides that "in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." This subsection of the bill expands the requirement of rule 9 to the facts supporting a civil RICO case. This provision should be applied in the same fashion as rule 9 is applied under current law.

Subsection (c)(10) contains two definitions: "governmental entity" and "charitable corporation." The term "governmental entity" defines persons able to bring suit under subsection (c)(1) for automatic treble damages, costs and fees. The term "charitable corporation" is referenced in section 7 of the bill.

Subsection (c)(11) establishes that an action under civil RICO for damages shall survive the death of the plaintiff and the defendant. In the event of bankruptcy, the action shall survive and be enforceable against a receiver in bankruptcy. Multiple damages, however, cannot be assessed against a receiver in bankruptcy.

Subsection (c)(12)(A) prohibits the use of the term "racketeer" in civil RICO damage cases not alleging a crime of violence as a predicate act. Instead, when the civil RICO damage case does not allege a crime of violence as a predicate act, the phrase "unlawful activity" must be used in place of the phrase "racketeering activity" and the phrase "pattern of unlawful activity" must be used in place of the phrase "pattern of racketeering activity."

Subsection (c)(13) lists the predicate offenses which constitute "crimes of violence." The bill refers to crimes of violence in two instances. A plaintiff who suffers bodily injury and alleges a crime of

violence as a predicate act may recover punitive damages in addition to actual damages, costs and fees. Second, the use of the term "racketeer" may only be used in a civil RICO case for damages when the plaintiff alleges that the defendant committed a crime of violence.

Section 3

Section 3 of the bill conforms the criminal fine available for violations of section 1962 to the general fine provision of title 18, and permits imprisonment for life if the violation for which the defendant is convicted is predicated on an offense that carries a maximum penalty of life. This is one of the few sections in the bill that addresses criminal RICO.

Section 4

Section 4 amends RICO by adding predicate offenses to section 1961(1). The committee added these offenses to strengthen and facilitate the use of RICO by law enforcement agencies and consumers. This section affects both criminal and civil RICO.

Section 5

Section 5 broadens the scope of RICO by providing for international service of process for both parties and witnesses. The purpose of this amendment is to increase the effectiveness of RICO against international terrorism.

Section 6

Section 6 grants to the federal courts the exclusive jurisdiction to hear RICO cases.

Section 7

Section 7 addresses the effective date of the bill.

Subsection (a) establishes the general rule that the bill's amendments shall apply to actions commenced after the date of enactment.

Subsection (b) provides for an exception to the general rule. Under the exception, pending cases that would only be eligible for an actual damages, costs and fees recovery under paragraph (2)(A) of section 1964(c) had they been commenced after enactment of the bill, shall be detrebled by the bill unless one of the three criteria contained in subsection (b) applies.

Subsection (b) contains three criteria. First, a pending case is not affected by the legislation if a defendant's liability has been established by a jury verdict or district court judgment or if a settlement has occurred. Second, a case is not affected by the legislation if the plaintiff is a charitable corporation.¹⁸ Third, the bill does not apply to a pending case if the court determines that, in light of all the circumstances, such a limitation on recovery would be "clearly unjust." The application of this criteria to specific cases is left to the discretion of the court. The legislation directs the court, in ex-

¹⁸ The term "charitable corporation" is defined in subsection (c)(1)(B) of section 2.

ercising its discretion, to take into consideration all of the circumstances presented by all the parties in the case.

VII. COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 9, 1988.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1523, a bill to amend chapter 96 of title 18, United States Code, as ordered reported by the Senate Committee on the Judiciary, May 24, 1988.

The CBO estimates that enacting S. 1523 would not have a significant effect on the federal budget, or on the budgets of state and local governments. The bill would make a number of amendments to the Racketeer Influenced and Corrupt Organizations Act (RICO), mostly affecting private civil suits brought under this act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the Act will not have any direct regulatory impact.

IX. ADDITIONAL VIEWS OF MESSRS. METZENBAUM AND SIMON

The Judiciary Committee voted to delete two important provisions from the bill introduced amending RICO: the provision making small investors eligible to recover more than actual damages, costs, and fees under civil RICO even when they also recover under securities and commodities laws and the provision adding several firearms violations as predicate offenses to section 1961.

SMALL INVESTOR PROVISION

As originally drafted, the bill would have made investors with a modest portfolio or an annual household income which is less than, or equal to, the national average household income eligible to recover punitive damages even if they have a remedy under securities or commodities laws for the harm they suffered. The reason we support this provision in the bill is because we believed, and continue to believe, that these investors need special treatment under the law. The consumers who would most likely fall into the category of small investors are the elderly living on a relatively inflexible retirement income, and families in the lower or middle class who have been able to save enough to acquire a small stock portfolio. It is these consumers who would tend to be among the least educated, the least able to protect themselves against the unscrupulous who would defraud them out of their meager income, and, therefore, the most vulnerable. Those contemplating a criminal fraud scheme may target individuals because of their vulnerability.

The ability of these consumers to recover more than actual damages, cost, and fees would increase the deterrent effect of civil RICO. The threat to those plotting a criminal fraud scheme of having to return up to three times the amount defrauded would be more likely to deter their conduct than the specter of simply returning the amount defrauded. The ability to recover more than actual damages also increases the likelihood that the victims of criminal conduct will fully recover their losses.

We remain concerned about the committee's deletion of the small investor provision. Otherwise, we believe that the bill's provisions making all consumers, other than those with a remedy under securities or commodities laws, eligible to recover actual damages, costs, fees, and up to twice the amount of actual damages in punitive damages if they prove a civil RICO violation makes a major contribution to the welfare of consumers in this country. If ever there was any doubt, this bill makes it clear that civil RICO is meant to give consumers a cause of action against a pattern of criminal fraud. We are proud to author a federal consumer fraud statute that will give relief to countless Americans in the future.

FIREARMS PREDICATE OFFENSES

The bill considered by the committee expanded the list of predicate offenses to include federal firearms felonies.

Because drug gangs frequently violate federal firearms laws, law enforcement officials strongly supported including these crimes in RICO as an additional means of reaching drug kingpins. When the committee considered S. 1523, this list was narrowed to cover only those firearms felonies most closely linked with illegal narcotics activity: (a) knowingly selling guns to an individual disqualified under federal law from possessing a firearm (18 USC Sec. 922(d)); (b) knowing receipt of a gun by an individual disqualified under federal law (18 USC Sec. 922(h)); (c) trafficking in stolen firearms (18 USC Sec. 922(i) and (j)); and (d) transporting a gun interstate with an intent to commit a felony (18 USC Sec. 924(b)).

Jamaican drug "posses" have recently emerged as a powerful force among narcotics manufacturers, smugglers, wholesalers and dealers. According to the Bureau of Alcohol, Tobacco and Firearms (ATF), the lead federal agency coordinating federal efforts targeted at Jamaican posses, posse members obtain their firearms by lying on federal forms to purchase illegally guns and by stealing guns from dealers and manufacturers. ATF reports that

The tracing of firearms after recovery is an integral part of the investigation of the Jamaican posses. Unlike narcotics, firearms can be traced from the manufacturers to the individual purchaser. . . . The information provided in the trace is the most efficient method of determining the movement of firearms and shows key links between posse members.

Since law abiding gun owners and gun dealers do not knowingly sell firearms to felons and do not traffic in stolen firearms, they would not have been affected by expanding RICO to include these serious federal felonies. On the other hand, inclusion of these felonies in RICO would have added new and much needed ammunition to our war on drugs.

HOWARD M. METZENBAUM.
PAUL SIMON.

X. ADDITIONAL VIEWS OF MR. SIMPSON

During the full committee markup S. 1523, I offered an amendment which would have added language to subsection (b) of section 7 of the bill. Specifically, that additional language was as follows:

For the purpose of paragraph (3), the term "clearly unjust"; may include circumstances in which any defendant in a pending action was convicted, in connection with the conduct upon which the plaintiff's claim is based, of an offense or conspiracy to commit an offense described in section 1961(1)(B) of title 18, United States Code.

This amendment was offered in order to provide the courts with some guidance in making a determination as to when it would be clearly unjust to retroactively apply this legislation to pending RICO cases. It seems apparent that retroactive application of this legislation will be unfair to victims of previous RICO activity who, relying on Congress' expressed word, have invested considerable time and resources pursuing their RICO claims in the courts. Face with retroactive legislation in the past, members of the Senate Judiciary Committee and of the Senate as a whole have spoken at length in opposition to retroactive application of statutes. Proposals for retroactive application of new rules for liability are not new to this Congress. "Special interests" have frequently urged enactment of such laws in a manner wherein they even enrich themselves instantaneously at the expense of others who are unable to obtain the same legislative action. Risks were undertaken by all parties to pending litigation with full knowledge of the laws that then existed. To retroactively change that law is to disturb, without warrant, the balance of the parties based upon the investment with respect to the pending cases. This abhorrence to retroactive application of statutes is rooted firmly in considerations of fairness.

My amendment was not so bold as to strike all retroactive application of the legislation passed by this committee. Far less than that, my purpose was simply to provide some guidance to the courts in making the determination as to when it would be clearly unjust to apply these amendments retroactively to pending RICO cases involving businesses. The legislation as drafted provides no such guidelines in shaping the amorphous term "clearly unjust." Additionally, the bill places an additional burden on the plaintiff in pending case. Not only must a plaintiff "prove his case" but, the business plaintiff in a pending action must also prove that he is entitled to proceed with his case for treble damages. I believe that it is unfair to place this additional burden on the plaintiff. At a minimum we should provide the court with some guidance which the court may or may not consider in making this very important determination. I emphasize that my amendment as offered to the committee would have merely provided the court with discretion.

The court was allowed under the amendment to consider or reject consideration of other circumstances as set forth by the amendment. Thus, the amendment was drafted by noting that the term "clearly unjust" may include certain circumstances.

Even then, if the court determined that it would consider such additional guidance as to defining whether retroactivity was clearly unjust, the amendment provided merely that the judge could review and consider the conviction of any defendant for racketeering activities or conspiracy to commit racketeering activities as set forth in current RICO laws.

The amendment allowed the court to consider prior criminal RICO conviction of any defendant in a pending civil RICO action for specific reasons. In cases where there were multiple defendants in a civil case, only some of those defendants may have already been convicted of a racketeering activity or a conspiracy to commit such an activity in a preceding criminal RICO trial. However, it makes sense that the courts should be allowed to consider those convictions with respect to other, nonconvicted defendants in the civil RICO case. Otherwise the civil court judge in the pending action would be forced to ignore the realities that in the criminal action, some of the defendants before him or her in the civil action may not have been convicted in the criminal trial solely because the prosecutor may have provided grants of immunity or negotiated a plea bargain in exchange for testimony. Such testimony may have been necessary to strengthen the criminal case, speed the criminal case to trial or shorten lengthy and expensive criminal investigations. However, it would indeed be unfair to allow the prosecutorial decisions to affect the ability of civil plaintiffs to recover for the same acts for which the defendants received immunity in the criminal case.

Although I vote in favor of the legislation following resolution of all amendments in the committee—because I believe in the importance of RICO reform—I do feel that my amendment would have strengthened the legislation and it may, indeed, be worthy of further discussion when the bill is considered by the full Senate.

ALAN K. SIMPSON.

XI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

CHAPTER 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

§ 1961. Definitions

[Preliminary matter unchanged]

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, *prostitution involving minors*, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code [18 USCS §§ 1 et seq.]: [Section 201] *Section 32 (relating to destruction of aircraft or aircraft facilities), section 81 (relating to arson), section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), section 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with*

commerce, robbery, or extortion), section 1952 (relating to racketeering), *section 1952A (relating to murder-for-hire)*, section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), *section 2318 (relating to counterfeit materials)*, section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts, sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), and chapter 51 (relating to homicide), chapter 73 (relating to obstruction of justice), and chapter 110 (relating to sexual exploitation of children), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 [11 USCS §§ 1 et seq.], fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, [or] (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) *section 134 of the Truth in Lending Act*, or (G) *section 5861 of title 26 (relating to firearms control)*.

(2)-(10) [Unchanged]

(As amended Nov. 2, 1978, P.L. 95-575, § 3(c), 92 Stat. 2465 Nov. 6, 1978, P.L. 95-598, Title III, § 314(g), 92 Stat. 2677; Oct. 12, 1984, P.L. 98-473, Title II, Ch IX, § 901(g), Ch X, Part N, § 1020, 98 Stat. 2136, 2143, Oct. 25, 1984, P.L. 98-547, Title II, § 205(1), (2), 98 Stat. 2770; Oct. 27, 1986, P.L. 99-570, Title I, Subtitle H, § 1365(b), 100 Stat. 3205-35, Nov. 10, 1986, P.L. 99-646, § 50(a), 100 Stat. 3605.)

* * * * *

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter [18 USCS § 1962] [shall be fined not more than \$25,000 or imprisoned not more than twenty years], *shall be fined under this title and imprisoned for not more than twenty years (or for life, if the violation is predicated on an offense for which the maximum penalty includes life in prison)*, or both, and shall forfeit to the United States, irrespective of any provision of State law—

* * * * *

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter [18 USCS § 1962] by issuing, *upon proof by a preponderance of the evidence*, appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future ac-

tivities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

[(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USCS § 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.]

(c)(1)(A) A governmental entity, excluding a unit of local government other than a unit of general local government, whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action therefore and, upon proof by a preponderance of the evidence, shall recover threefold the actual damages to the business or property of the governmental entity sustained by reason of such violation, and the costs of the civil action, including a reasonable attorney's fee.

(B) A civil action under subparagraph (A) of this paragraph must be brought by—

(i) the Attorney General or other legal officer authorized to sue, if the injury is to the business or property of the United States;

(ii) the chief legal officer of a State, if the injury is to the business or property of the State;

(iii) the chief legal officer, or other legal officer authorized to sue, of a unit of general local government of a State, if the injury is to the business or property of the unit of general local government; or

(iv) the court-appointed trustee, if the injury is to the business or property of an enterprise for which a trustee has been appointed by a United States district court under section 1964(a) of this title.

(2) A person whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action therefore and, upon proof by a preponderance of the evidence, shall recover—

(A) the actual damages to the person's business or property sustained by reason of such violation, and the costs of the civil action, including a reasonable attorney's fee; and

(B) punitive damages of up to twice the actual damages, if—

(i)(I) the person whose business or property is injured is a unit of local government other than a unit of general local government; and

(H) the plaintiff proves by clear and convincing evidence that the defendant acted in conscious and wanton disre-

gard of the consequences of the defendant's actions to the plaintiff;

(ii)(I) the person whose business or property is injured is a natural person, or an organization meeting the definition of exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(3)), an organization meeting the definition of an indenture trustee under the Trust Indenture Act of 1939 (15 U.S.C. 77jjj et seq.), an organization meeting the definition of a pension fund under the Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.), or an organization meeting the definition of an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

(II) the person is injured by conduct proscribed by section 21(d)(2)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)(A)), subject to the condition that the calculation of punitive damages shall be consistent with section 21(d)(2)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)(C)), and that the assessment of punitive damages against a person employing another person who is liable under this clause shall be consistent with section 21(d)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)(B)); and

(III) the plaintiff proves by clear and convincing evidence that the defendant acted in conscious and wanton disregard of the consequences of the defendant's actions to the plaintiff; or

(iii)(I) the person whose business or property is injured is a natural person and the injury occurred in connection with a purchase or lease, for personal or noncommercial use or investment, of a product, service, investment, or other property, or a contract for personal or noncommercial use or investment;

(II) neither State nor Federal securities or commodities laws make available an express or implied remedy for the type of behavior on which the claim of the plaintiff is based; and

(III) the plaintiff proves by clear and convincing evidence that the defendant acted in conscious and wanton disregard of the plaintiff.

(3) In a civil action involving a claim for punitive damages under paragraph (2)(B) of this subsection, the trier of fact, in determining the amount of punitive damages, shall consider—

- (A) the degree of culpability of the defendant;
- (B) the degree of disparity in the bargaining positions of the plaintiff and the defendant;
- (C) any history of similar conduct by the defendant;
- (D) the benefits derived from the unlawful conduct by the defendant;
- (E) the number of persons victimized;
- (F) any prior decision by a court or State or Federal agency as to whether the defendant's conduct giving rise to the action violated applicable law or constituted bad faith;

(G) the extent to which the class action aspect of the compensatory damage award fulfills the deterrent function of punitive damages; and

(H) any other factor the court deems to be an equitable consideration bearing on the appropriate amount of punitive damages.

(4) A person who suffers bodily injury by reason of any conduct in violation of section 1962 of this title that includes a crime of violence as a predicate act may bring a civil action in an appropriate United States district court, and, upon proof by a preponderance of the evidence, shall, as allowed under applicable State law, recover the actual damages sustained by reason of such violation (excluding pain and suffering) and punitive damages of up to twice the actual damages, as well as the costs of the civil action, including a reasonable attorney's fee.

(5) A person whose business or property is injured by conduct in violation of section 1962 of this title may bring, in any appropriate United States district court, a civil action therefore and, upon proof by a preponderance of the evidence, shall recover threefold the actual damages to the person's business or property sustained by reason of such violation, and the costs of the civil action, including a reasonable attorney's fee, if the person who engaged in the conduct was, with respect to such conduct, convicted of a racketeering activity or of a violation of section 1962 of this title.

(6)(A) Except as provided in subparagraph (B), a civil action under this subsection may not be commenced after the latest of—

(i) four years after the date the cause of action accrues;

(ii) four years after the conduct causing injury to the plaintiff terminates; or

(iii) two years after the date of the criminal conviction required for an action under paragraph (5) of this subsection.

(B) A civil action brought pursuant to subsection (c)(1)(B) (i), (ii), or (iii) may not be commenced after the latest of—

(i) six years after the date the cause of action accrues; or

(ii) four years after the conduct causing injury terminates.

(C) The period of limitation in subparagraphs (A) and (B) of this paragraph on a cause of action does not run during the pendency of a government civil action or criminal case relating to the conduct upon which such cause of action is based.

(7) It shall be an affirmative defense to an action brought under this subsection that the defendant acted in good faith and in reliance upon an official, directly applicable regulatory action, approval, or interpretation of law by an authorized Federal or State agency in writing or by operation of law. Before the commencement of full discovery on and consideration of the plaintiff's claim, the court shall determine, upon defendant's motion, the availability of any affirmative defense asserted under this paragraph, provided that discovery of such defense shall be allowed, as provided by law or rule of procedure, prior to the court's determination.

(8) In an action under this subsection, evidence relevant only to the amount of punitive damages shall not be introduced until after a finding of liability, except the court may permit, for good cause shown and in the absence of any undue prejudice to the defendant,

introduction of such evidence prior to a finding of liability on motion of a party or in the exercise of its discretion.

(9) In an action under this subsection, facts supporting the claim against each defendant shall be averred with particularity.

(10) As used in this subsection:

(A) The term "governmental entity" means the United States or a State, and includes any department, agency, or government corporation of the United States or a State, any political subdivision of a State, and any enterprise for which a trustee has been appointed by a United States district court under section 1964(a) of this title (but only during the tenure of such trustee).

(B) The term "charitable corporation" means a charitable corporation formed under section 501(c)(3) of the Internal Revenue Code of 1986 or a corporation formed under section 501(c)(14)(B) of the Internal Revenue Code of 1986.

(11)(A) An action or proceeding under this subsection shall not abate on the death of the plaintiff or defendant, but shall survive and be enforceable by and against his estate and by and against surviving plaintiffs or defendants.

(B) An action or proceeding under this subsection shall survive and be enforceable against a receiver in bankruptcy but only to the extent of actual damages or other relief.

(12) In a civil action under this subsection in which the complaint does not allege a crime of violence as a predicate act—

(A) the term "racketeer" shall not be used in referring to any party; and

(B) the terms used to define conduct in violation of section 1962 of this title shall be referred to as follows:

(i) "racketeering activity" as defined in section 1961(1), shall be referred to as "unlawful activity"; and

(ii) "pattern of racketeering activity", as defined in section 1961(5), shall be referred to as "pattern of unlawful activity".

(13) In a civil action under this subsection in which the complaint alleges a crime of violence, the predicate acts constituting a crime of violence within the meaning of this subsection are offenses involving—

(A) when chargeable under State law the following: murder, kidnapping, arson, or robbery;

(B) when accompanied by bodily injury the following: extortion as defined by section 1951 of title 18; loansharking and other extortionate credit transactions as defined by sections 891-894 of title 18; obstruction of justice as defined in chapter 73 of title 18; the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States; or sexual exploitation of children as defined by chapter 110 of title 18; or

(C) destruction of aircraft or aircraft facilities as defined by section 32 of title 18; arson as defined by section 81 of title 18; murder-for-hire as defined by section 1952A of title 18; or homicide as defined by chapter 51 of title 18.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States

under this chapter [18 USCS §§ 1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States. (Added Oct. 15, 1970, P.L. 91-452, Title IX, § 901(a), 84 Stat. 943.)

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter [18 USCS §§ 1961 et seq.] against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter [18 USCS §§ 1964] in any district court of the United States in which it is shown that the ends of justice require that other parties [residing in any other district] be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served [in any judicial district of the United States by the marshal thereof] *anywhere the party may be found*.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter [18 USCS §§ 1961 et seq.] in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served [in any other judicial district] *anywhere the witness is found* except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides [in another district] at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter [18 USCS §§ 1961 et seq.] may be served on any person [in any judicial district in which] *where* such person resides, is found, has an agent, or transacts his affairs.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, § 901(a), 84 Stat. 944.)

* * * * *

REFUGEE RESETTLEMENT EXTENSION ACT OF 1988

AUGUST 9, 1988.—Ordered to be printed

Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 2605]

The Committee on the Judiciary, to which was referred the bill (S. 2605) to amend the Immigration and Nationality Act to extend for 3 years the authorization of appropriations for refugee assistance, and for other purposes, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. PURPOSE

The purpose of the committee bill is to extend for 3 years the refugee resettlement assistance programs authorized by the Refugee Act of 1980 and to make minor adjustments in the administration of those programs. Authority for these programs expires on September 30, 1988.

These affected programs include those under the Office of Refugee Resettlement (Department of Health and Human Services), as well as the activities of the Bureau for Refugee Programs (Department of State) for the reception and placement of refugees in the United States for resettlement.

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II. HISTORY OF CURRENT LEGISLATION

The committee bill is bipartisan legislation that was introduced on June 29, 1988, by Senator Edward M. Kennedy, chairman of the Subcommittee on Immigration and Refugee Affairs, and cosponsored by the other members of the subcommittee, Senator Alan K. Simpson (ranking member) and Senator Paul Simon.

Because of the broad support for the bill—and the fact that it was introduced by all three members of the subcommittee—the bill was held at the full committee and favorably reported with one amendment by Senator Kennedy and Senator Simpson.

PREVIOUS REAUTHORIZATION MEASURES

Since the enactment of the Refugee Act of 1980, the resettlement programs that it authorizes have been extended three times. The 1980 act authorized resettlement programs through fiscal year 1982.

Shortly after enactment of the Refugee Act, the program was faced with the sudden influx of about 125,000 Cuban and Haitian "boat people" and the needed admission of more than 160,000 Indo-chinese refugees, as well as more than 40,000 refugees from the Soviet Union and other parts of the world.

The resettlement system embodied in the Refugee Act—one of partnership between the public and private sectors for effective refugee sponsorship and resettlement—performed admirably through this period. Voluntary agencies, churches and community groups throughout the country rose to the occasion and provided the needed sponsors for the refugees. Thousands of volunteer hours and millions of dollars in private resources were devoted to the effort. And federal, state and local governments assembled the safety net of assistance required under the program.

But because of this early strain placed on the program, Congress opted to extend the resettlement program for only one year, under the Refugee Assistance Amendments of 1982 (P.L. 97-363). The Judiciary Committees believed that Congress should be required to re-examine the program's health after that difficult initial period and to determine whether changes were necessary.

However, no action was taken by either House of Congress before funding authority expired in fiscal year 1983, although bills were introduced and hearings held on the reauthorization of the program.¹ Funding therefore was maintained on continuing resolutions for the next two years, fiscal years 1984 and 1985.

99TH CONGRESS

In the 99th Congress, refugee assistance reauthorization was again the focus attention. On June 7, 1985, Senator Simpson and Senator Kennedy introduced S. 1262, which would reauthorize funding for 2 years. This bill was discharged from the subcommittee and favorably reported by the Committee on the Judiciary 6 days later, on June 13, 1985. The House of Representatives also introduced a reauthorization bill, H.R. 1452, which the Senate even-

¹ S. Rpt. 99-154, pp. 2-4.

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tually accepted, with amendments, and which finally cleared both Houses on October 18, 1986. This legislation (P.L. 99-605) provided for 2 years of authority for refugee assistance under the Refugee Act of 1980.

STRENGTH OF REFUGEE PROGRAM

Throughout the 8-year history of the Refugee Act, the American people have consistently belied the myth that there is "compassion fatigue" about refugees. As Senator Kennedy stated in a hearing a year ago:

[S]ome critics have said that the American people are suffering from refugee "compassion fatigue." Frankly, when I look at our many accomplishments over the past few years, every indication suggests that the American people—the voluntary and church agencies—still care very deeply about the plight of refugees. * * *

[W]e have rescued—and will continue to rescue—tens of thousands of refugees each year through our unique partnership of government and the private sector in resettlement. And we have provided life saving protection and assistance to millions more in cooperation with our partners in the international community, particularly the U.N. High Commissioner for Refugees.²

Another indicator of the relative health of the program is the fact that after several years of increases in cash assistance used by refugees, the program has begun to show a decline. For example, in fiscal years 1986, 57.4 percent of refugees eligible for cash assistance under the federal refugee program (those in the United States less than 31 months) were receiving it. In fiscal year 1987, this number was reduced to 52 percent, about the level of 5 years ago. While this is only a modest improvement, the committee is hopeful this trend will continue.

In fiscal year 1988, the refugee program was particularly challenged by simultaneous reductions in funding and increases in refugee admissions due to rising emigration from the Soviet Union. Voluntary agencies received fewer federal funds for resettlement, but the same responsibility for resettlement. Also the period of time for which the Federal Government would reimburse state and local governments for refugee assistance was reduced from 31 to 24 months, and states suffered massive reductions in federal reimbursement for their administrative costs because of previous legislative-executive branch agreements during the "budget summit."

As always, the program is coping and adapting to these challenges, and commitment to refugee resettlement remains high. But it was with these factors in mind—the continuing compassion of the American people toward refugees, the perceptible progress in reducing welfare dependency and the upheavals caused by funding reductions—that the committee determined that above all else, continuity was needed, and thus it decided to extend the program for three years without major changes.

² U.S. Senate, Subcommittee on Immigration and Refugee Affairs, "Midyear Consultation on Refugee Programs," S. Hrg. 100-235, p. 2.

Indeed, as Senator Kennedy stated upon introducing S. 2605:

This bill is a tribute to all those who work so selflessly to assist refugees to rebuild their lives in America. It seeks to assure stability and continuity in a program which has undergone considerable fiscal changes in recent months. Therefore, we propose no major changes and seek to promote greater stability.³

Senator Simpson, a cosponsor of the legislation, also noted the congressional consensus that is essential when dealing with refugee matters:

[L]et me compliment my subcommittee colleagues for the reasonable, bipartisan approach taken to this bill. U.S. refugee policy is a nonpartisan issue, and I believe we best serve the American public and national interest when we approach the issue in this manner.⁴

III. DISCUSSION OF COMMITTEE INTENT

The committee bill would extend for 3 years the refugee resettlement provisions of the Refugee Act of 1980. This is the longest period of reauthorization proposed since enactment of the act 8 years ago. This is a signal of the committee's intent that every effort be made to continue at all levels a stable and reliable refugee resettlement program—one which federal agencies, states, counties, voluntary agencies, community groups and concerned Americans can count upon and plan for in the years ahead.

LINE-ITEM AUTHORIZATIONS

The committee bill continues the line-item authorizations contained in the Refugee Act of 1980. Included among these, importantly, is an \$80 million annual authorization for social services. Such services are intended to include English language training, job training and job placement, and other social support programs for effective resettlement, including economic self-sufficiency.

The committee believes that one of the strengths of the Refugee Act is its flexibility in responding to refugee needs. This same flexibility should also be permitted under refugee social service programs, allowing public and private nonprofit agencies to combine the variety of services that best meet the needs of particular refugees. If a state can demonstrate an effective use of social service funds for programs other than those directly related to employment (such as English language programs that show promise in assisting refugees in gaining employment), the committee recommends that states be allowed maximum flexibility by the Office of Refugee Resettlement in the Department of Health and Human Services [ORR] to invest social service dollars in such programs. The committee understands "effective use" to mean such uses that will result in successful, expeditious refugee self-sufficiency.

The committee is also concerned by the dramatic reduction in federal reimbursement of states' administrative costs under the ref-

³ *Congressional Record*, June 29, 1988, p. S. 8814.

⁴ *Congressional Record*, June 29, 1988, p. S. 8815.

ugee program caused partly by the recent "budget summit." While these costs should be monitored carefully, comparisons to administrative costs under regular state and federal welfare programs are not always appropriate. State administrative costs are both direct and indirect and include not only the dispensing of cash payments, but also the management of social service programs and the coordination of certain resettlement activities within the state. The committee encourages administrative flexibility in this area.

MINIMUM SOCIAL SERVICE FUNDING FOR SMALL STATES

The committee notes that for the past 7 years, the ORR has provided a minimum of \$75,000 for refugee social services to states that have small refugee/entrant populations. Although these states account for a relatively small number of refugees, many of their programs are among the best managed and most successful in helping refugees become fluent in English, gainfully employed and appropriately dispersed among the general U.S. population. Without this funding floor, it would be impossible for some of these states to continue their small but highly effective refugee programs.

Accordingly, the committee believes it is in the strong interest of the national refugee program that these States continue to receive not less than \$75,000 for refugee social services. The committee has been assured by the Department of Health and Human Services that it has no plans to reduce or eliminate this floor, and that therefore statutory changes to assure this minimum are unnecessary at this time.

The committee believes that any reduction in this floor would seriously jeopardize these important programs, and refugees who would have been well cared for by states, such as Vermont and Wyoming, would have to go elsewhere. This would cause an even greater burden on states that are already heavily impacted and straining to meet the needs of large, urban refugee populations.

CONSOLIDATION OF ADMINISTRATIVE PROCEDURES

Section 3 of the committee bill permits states to consolidate administrative procedures for the federal grants received for refugee programs. States receive refugee funding from the ORR through at least four programs: cash and medical assistance, social services, targeted assistance, and discretionary projects. Grant procedures and reporting deadlines vary among these programs, resulting in considerable administrative inefficiency. States should be able to submit a single grant request for all programs under a state plan, as well as follow reporting schedules that permit them to account for various program expenditures in a single report.

It is also the committee's intent that these consolidated procedures be administered in a way which is efficient for ORR as well. For example, ORR should not be required to consolidate procedures at the request of one state, but adopt varying procedures at the request of another. All states should be required to follow the same consolidated procedures.

ANNUAL PRESIDENTIAL CONSULTATIONS ON ADMISSIONS

The Refugee Act of 1980 requires the President before the end of each fiscal year to propose to the Judiciary Committees of the House and Senate appropriate "ceilings" for the admission of refugees in the coming fiscal year. After consultation with the committees, the President then makes a final determination—sets final ceilings—for refugee admissions for the coming year.

The committee bill slightly alters this annual consultation process in two ways.

First, Section 4 moves up the initiation of the consultation process from its usual late September time frame to begin no later than June 1. This means that the President will be required to send his admissions recommendations—preliminary ones, if necessary—to the Judiciary Committees by that date. In this way, it is hoped that the actual consultations on admissions—any hearings or other activities that may be required—can begin somewhat earlier than they have in the past and proceed more smoothly, rather than being conducted in the rushed closing days of the fiscal years.

Second, Section 5 requires representatives of the President, as part of the formal consultations on admission, also to address any funding adjustments which may be required. A proposal on any needed funding adjustments must also be part of any emergency consultations that the President may initiate.

For the past 2 years, the President submitted refugee program budgets to Congress based upon projected refugee admissions that were far lower than those the President ultimately recommended to be admitted. While no recommendation has yet been made for fiscal year 1989, the President's fiscal year 1989 budget request submitted in January 1988 contained dramatically different admissions projections in the budgets proposed for the Bureau for Refugee Programs and the Department of Health and Human Services.

The committee recognizes that humanitarian needs for resettlement may change dramatically between the time the budget request is submitted and the annual consultations process. Nevertheless, it hopes that the change contained in Section 5 will cause future administrations to be as realistic as possible and to submit appropriate budget amendment requests later in the year, by requiring budget questions to be addressed in greater detail in the admissions consultations than is presently required by Section 207(e)(3).

Furthermore, with admissions consultations occurring earlier, rather than in late September, Congress will be better able to consider the President's recommendations in time to seek necessary funding.

Despite these adjustments, the committee remains resolute in its view that the first obligation of the President and the Judiciary Committees in consulting on refugee admissions is a humanitarian one: to determine the United States' response to refugees who meet the Refugee Act's definition and who are of "special humanitarian concern" to this country.

CONSULTATION AMONG RESETTLEMENT "ACTORS"

The Refugee Act of 1980 requires regular consultation by the federal government with state and local authorities and voluntary agencies on questions of resettlement policy. While the letter of this obligation has been met over the past few years, the informal and *ad hoc* nature of this consultation has meant that the spirit of the requirement has not been met. Those who do the grassroots work of guiding a refugee to self-sufficiency have criticized the absence of collaboration in the development of policies on refugee placement in resettlement—policies which have tremendous effect on their day-to-day activities.

Section 6 of the committee bill simply adds structure to the existing consultation requirement. It suggests the need for more methodical approaches to consultation which involve all relevant parties in the planning and execution of placement and resettlement policy.

The committee also believes that some consultation should even be possible in emergency circumstances. For example, when the appropriation for the Office of Refugee Resettlement was reduced suddenly in fiscal year 1988, states were peremptorily informed, with no warning or discussion, that ORR would reduce from 31 to 24 months the time period for which states' costs for refugee assistance would be reimbursed. Consultation should have been possible in this circumstance, if only by telephone.

VOLUNTARY AGENCY AUDITS AND REPORTS

A major strength of the U.S. resettlement program is the partnership of public and private agencies in the resettlement of refugees. The many achievements of the program would simply not be possible without the selfless commitment of the American people to the resettlement of refugees through their churches and community groups. And there is every indication that every dollar granted a voluntary agency for a refugee's resettlement is more than matched by private contributions in cash and kind.

As public resources run scarce, the private sector is shouldering more and more of the resettlement burden. But at the same time, the federal government continues to impose mammoth reporting and resettlement requirements upon voluntary agencies which are not consistent with the initial intent of the Refugee Act.

For example, the committee questions the necessity of requiring voluntary agencies to submit quarterly full financial reports to the State Department, as is now required by Section 412(b)(7)(A). The committee believes that, while it may be appropriate to require quarterly performance reports, full financial reports should be required only on an annual basis. The State Department also restricts resettlements to within 100 miles of voluntary agency local offices. Thus, a church with the means and commitment to sponsor refugees—but which happens to be more than 100 miles from the nearest voluntary agency office—must first receive a waiver from the State Department before it is allowed to sponsor. This is an arbitrary and unacceptable requirement.

The committee believes the present burdensome financial reporting requirements are inimical to the goal of strengthening the vi-

tality of the private sector in resettlement. They are also excessive in view of the minimal funding which voluntary agencies now receive. As the State Department apparently is considering a further reduction in funding for voluntary agencies in fiscal year 1989, it is incumbent upon it to devise considerably more flexible reporting requirements.

The committee bill eliminates the requirement in existing law for an annual audit of voluntary agencies by the General Accounting Office. Instead, the committee bill simply requires voluntary agencies to include a private audit in their annual reports. The committee bill also makes more reasonable other reporting requirements.

The committee's audit provisions will allow a reasonable determination that federal funds authorized for the reception and placement of refugees are used in accordance with the Refugee Act and the "cooperative agreement" provisions between the Department of State and voluntary agencies. The committee recognizes that in moving from an annual GAO audit of voluntary agencies to private audits, voluntary agencies will incur additional costs. These costs likely must come from limited federal funds for reception and placement or from private contributions, both of which should be used primarily for resettling refugees.

Accordingly, the committee intends that the State Department implement the audit provisions in a manner which recognizes these funding problems and act to minimize costs to voluntary agencies and maximize reliance upon existing certified audit procedures utilized by the voluntary agencies, wherever possible.

PLACEMENT POLICY

Section 8 of the committee bill transfers responsibility for "placement policy" from the Office of Refugee Resettlement to the U.S. Coordinator for Refugee Affairs. "Placement policy" determines where in the United States refugees should or should not be placed for successful resettlement.

This change is not made because of any dissatisfaction on the part of the committee about the level of coordination within the federal government on refugee placement. It is simply a recognition that coordination is required and as such should be assigned to the Coordinator.

The committee also believes that greater consultation with state governments about refugee placement may be warranted. It has come to the committee's attention that, in some instances, refugees continue to be placed for resettlement in areas of low resettlement success or in which local services have been overburdened. For example, while Massachusetts as a whole has been largely receptive of refugees, the placement of large numbers in certain parts of the state has caused a severe strain on available housing, public schools, and city services. Resettlement in these areas should be limited until improvements in refugees' conditions can be achieved and services recover from the influx of refugees.

STUDY ON REFUGEE CASH AND MEDICAL ASSISTANCE

Section 9 requires a study from the Office of Refugee Resettlement on the likely results of placing all refugees on programs of Refugee Cash Assistance and Refugee Medical Assistance, instead of continuing present refugee use of Aid to Families with Dependent Children and Medicaid. While the committee is concerned about disparate treatment of specific groups that are categorically eligible for entitlement programs, there is significant evidence that general welfare programs inhibit the successful resettlement of newly arriving refugees. To the extent feasible, ORR should predict the improvements in self-sufficiency and the reductions in federal spending that might result if such a program were enacted.

While the only provision in the committee bill which addresses refugee cash and medical assistance is the Section 9 study, the committee nonetheless strongly believes that the special refugee cash and medical assistance programs must continue to be available for at least an 18-month period. A reduction of this assistance to a time period of less than 18 months is certain to promote dangerously disruptive levels of secondary migration, particularly among families. For it is the committee's belief that families generally need more than 12 months of security before becoming self-sufficient. Absent that security, families in states with moderate public assistance programs are likely to migrate to those states with the most generous programs, thereby potentially driving up program costs overall.

PILOT PROGRAM FOR WELFARE DEPENDENT REFUGEES

Section 10 of the committee bill encourages refugees who are chronically dependent upon public assistance to participate in the highly successful Planned Second Resettlement Program, or similar programs, of the Office of Refugee Resettlement. The Planned Secondary Resettlement Program moves welfare dependent refugees from areas of low employment and limited refugee self-sufficiency to areas of high employment and resettlement success.

Participation in the planned secondary resettlement program is voluntary, and would remain so under the committee bill. But Section 10 encourages participation by attempting to facilitate the quicker movement to the United States of qualified relatives of refugees in the United States who participate in the Planned Secondary Resettlement Program or similar planned programs or who are not receiving public assistance. Otherwise, newly admitted refugees tend to join their relatives in areas with a history of resettlement problems. The committee bill would permit the entire family—both dependent refugees already here and their relatives abroad—to start their lives afresh in areas of the United States where resettlement prospects are more promising.

It is the committee's intent that the incentive to become self-sufficient or to relocate be extended to Hmong refugees who are having particular difficulty gaining self-sufficiency in certain parts of the United States. Most standard refugee programs, such as targeted assistance, have been generally unsuccessful in helping Hmong refugees gain economic self-sufficiency. But the committee

also intends that other similarly situated refugees be able to participate in this pilot program.

The committee believes that this pilot program, contrary to other large-scale or complex projects attempted in the past, will be relatively simple to administer, for the following reasons:

- It utilizes an existing program—the Planned Secondary Resettlement Program.
- The numbers of participants should be manageable. Only 90 families participated in the first half of fiscal year 1988, and the pilot program probably will not generate geometrically larger numbers.
- Voluntary agencies can contact the relatives in the United States to determine their economic situation, just as they are required to do now. Welfare dependent relatives could be asked if they wished to participate in the pilot at that time. And the committee believes that it is possible for the Office of Refugee Resettlement to identify likely candidates. Once designated as participants, their names could be provided to the Bureau for Refugee Programs and the Immigration and Naturalization Service, which could then seek to expedite their relatives' resettlement to the extent possible.
- A sophisticated U.S. refugee processing operation is already in place overseas, which must assign priorities for movement to refugees approved for resettlement in the United States.

It is not the committee's intention that overseas training and medical examinations and treatment be in any way curtailed, or that the administration be exposed to any legal liability in the event operational or other requirements prevent a particular admission from being expedited. It is hoped that a good-faith effort would be made to move cases more quickly than might otherwise be the case.

This pilot program will in no way affect the number of refugees admitted to the United States. Nor will it alter in any way which individual refugees or groups are selected for resettlement. In fact, the committee strongly believes that the admission of a refugee should never be tied to the behavior of that refugee's relatives in the United States. If a relative in the United States agrees to relocate, however, it does seem appropriate to have their relatives in first asylum join them in that new location as soon as practicable, if possible.

But, consistent with the Refugee Act of 1980, the State Department currently gives priority to different refugees for movement to the United States in six different categories. The committee provision would simply expedite—possibly within the existing priority system—the movement of refugees already approved for the United States whose relatives do not rely on public assistance, or whose welfare dependent relatives here are willing to participate in the Planned Secondary Resettlement Program.

PRIVATE SECTOR FUNDING FOR RESETTLEMENT

For each of the past 2 years, the President, following consultation with the Judiciary Committees, has set aside 4,000 refugee ad-

missions "numbers" for so-called "private sponsorships"—ones in which the private sector would bear the cost of resettlement.

However, to date, none of these numbers has been used, although the first Memorandum of Understanding for privately funded admissions was signed in June 1988 by the U.S. Coordination for Refugee Affairs, the Commissioner of the Immigration and Naturalization Service and the Cuban-American National Foundation. The first admissions under this program may occur in August. Four other projects are currently under serious consideration by the administration, and two may bear fruit in fiscal year 1988.

The committee believes that increased awareness and understanding of the conditions of this private sector program could lead to wider use of the unfunded refugee numbers in the future. The committee intends that the State Department and the Office of Refugee Resettlement expeditiously draft guidelines which enable private sponsorship and encourage self-sufficiency. The committee believes that the Memorandum of Understanding and guidelines developed to date by the Coordinator and INS (in consultation with the Office of Refugee Resettlement, the Bureau for Refugee Programs and OMB) provide an excellent framework for testing the private funding concept and adequate assurance against federal expenditures.

The committee intends that such guidelines be available to the public no later than January 1989.

The committee believes that the preparation and distribution of these private sponsorship guidelines would better comply with the levels proposed in the annual consultation on refugee admissions. There is no intent on the committee's part to affect the annual level of funded admissions in either a positive or negative sense. Private sponsorship should be utilized for portions of the total refugee admissions authorized, which means that all privately sponsored refugees must belong to groups designated as of special humanitarian concern to the United States.

This provision assumes equity among refugee groups which meet the guidelines when the administration assesses resettlement opportunities in the United States, and it incorporates private sponsorship into our overall refugee admissions policy.

VOLUNTARY AGENCY MATCHING GRANT PROGRAM

The committee expresses its strong support for the immensely successful voluntary agency matching grant program and its intent that the program be continued and expanded where warranted. This program, operated by the Office of Refugee Resettlement, provides a dollar-for-dollar match to voluntary agencies for four months of intensive, "hands on" resettlement. The Office of Refugee Resettlement reports that for the first half of fiscal year 1988, only 3 percent of those graduating from the four-month program were receiving public cash assistance. Of those needing to remain in the program beyond the 4 months, only 14 percent were on cash assistance.

The administration has sought for the past few years to eliminate the matching grant program. However, under congressional pressure, the program has been maintained.

Authority for the program already clearly exists under the mandate of the Office of Refugee Resettlement. Because the administration finally has agreed to support the program (and in fact included it in its fiscal year 1989 budget request), the committee need not add further authority for it. However, the committee's clear intent is that the program continue as long as it is needed.

TARGETED ASSISTANCE

There has been some discussion over the past few years about whether to eliminate the targeted assistance program. It is the committee's firm view that such a program for flexible responses to special needs should continue to exist for communities facing extraordinary resettlement problems.

A recent study prepared for the Office of Refugee Resettlement underscores the importance of this program.⁵ While certain problems remain, the study nonetheless showed progress among program participants in reducing cash assistance usage, gaining employment or increasing income and encouraging employers to hire refugees in the program.

In addition, serious questions have been raised before the committee about an alleged lack of equity in the distribution of targeted assistance. Granted, at times Congress designates targeted assistance for certain programs. But, over time, certain states have come to rely on the targeted assistance program for a significant percentage of its federal refugee funding, sometimes years after those states ceased receiving significant numbers of refugees. The committee simply urges for the future that every effort be made to assure that funds not be "institutionalized" in certain countries, but instead go to areas of greatest need.

IV. VOTE OF THE COMMITTEE

On July 14, 1988, with a quorum present, by voice vote, the Committee on the Judiciary unanimously ordered the bill, S. 2605, favorably reported with one amendment.

V. TEXT OF S. 2605

[S. 2605, 100th Cong., 2d Sess.]

A BILL To amend the Immigration and Nationality Act to extend for 3 years the authorization of appropriations for refugee assistance, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) **SHORT TITLE.**—This Act may be cited as the "Refugee Resettlement Extension Act of 1988".

(b) **AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.**—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

⁵ "Impact of Targeted Assistance on Refugee Economic Histories: Evaluation of the Refugee Targeted Assistance Program," February 1988.

SEC. 2. THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.

(a) **THREE-YEAR EXTENSION.**—Section 414(a) (8 U.S.C. 1524(a)) is amended by striking out “fiscal years 1987 and 1988” and inserting in lieu thereof “fiscal years 1989, 1990, and 1991”.

(b) **ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.**—Such section is further amended—

(1) in paragraph (2), by striking out “for fiscal year 1987” and all that follows through “\$77,924,000” and inserting in lieu thereof “for each of fiscal years 1989, 1990, and 1991, \$80,000,000”;

(2) in paragraph (3), by striking out “for fiscal year 1987;” and all that follows through “\$9,125,000” and inserting in lieu thereof “for each of fiscal years 1989, 1990, and 1991, \$10,000,000”; and

(3) in paragraph (4), by striking out “for fiscal year 1987” and all that follows through “\$5,434,000” and inserting in lieu thereof “for each of fiscal years 1989, 1990, and 1991, such sums as may be necessary”.

SEC. 3. CONSOLIDATION OF ADMINISTRATIVE PROCEDURES ON FUNDING.

Section 412(a)(4)(B) (8 U.S.C. 1522(a)(4)(B)) is amended—

(1) by redesignating clauses (i), (ii), (iii), and (iv) as subclauses (I), (II), (III), and (IV), respectively;

(2) by striking out “(B) No” and inserting in lieu thereof “(B)(i) Subject to clause (ii), no”; and

(3) by adding at the end thereof the following:

“(ii) Nothing in clause (i) may be construed as prohibiting any State from submitting a single grant proposal to cover programs within the State funded under the chapter or from establishing reporting deadlines on a concurrent basis for those programs or as prohibiting any other consolidation of administrative procedures relating to funding of programs under this chapter. To the maximum extent practicable, the Director shall permit the States to consolidate such administrative procedures.”.

SEC. 4. APPROPRIATE CONSULTATION.

The first sentence of subsection (d)(1) of section 207 (8 U.S.C. 1157(d)(1)) is amended by inserting “, but not later than June 1,” after “each fiscal year”.

SEC. 5. CONSULTATIONS ON REFUGEE ADMISSIONS.

Section 207(e)(3) (8 U.S.C. 1157(e)(3)) is amended by inserting before the period at the end thereof the following: “, including, if necessary, a recommendation for any change in budget authority for the respective fiscal year necessary to cover the estimated refugee admissions for that fiscal year”.

SEC. 6. CONSULTATION BETWEEN THE FEDERAL GOVERNMENT AND STATE AND LOCAL GOVERNMENTS.

Section 412(a)(2)(A) (8 U.S.C. 1522(a)(2)(A)) is amended—

(1) by inserting before the period at the end thereof the following: “, and funding policies and procedures, both current and anticipated”; and

(2) by adding at the end thereof the following: “Such regular consultation shall include meetings at which State and local

governments and private nonprofit voluntary agencies are jointly represented and at which recommendations for the refugee program are considered.”.

SEC. 7. INITIAL RESETTLEMENT ASSISTANCE, AUDITS, AND REPORTS.

(a) **TECHNICAL ADMENDMENTS.**—(1) The first sentence of paragraph (1)(A) of section 412(b) (8 U.S.C. 1522(b)) is amended to read as follows: “For each fiscal year the Director (except as provided in subparagraph (B)) is authorized to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including the initial resettlement and placement with sponsors) of refugees in the United States.”.

(2) Such section is further amended by striking out paragraph (6) and redesignating paragraph (7) as paragraph (6).

(3) Subparagraph (F) of paragraph (8) of such section is amended by striking out “subsection (b)(7)” and inserting in lieu thereof “paragraph (6)”.

(b) **RESPONSIBILITIES OF VOLAGS.**—(1) Paragraph (6) of such section (as redesignated by subsection (a)) is amended—

(A) in subparagraph (A), by striking out “and financial status”;

(B) by amending clause (i) of subparagraph (E) to read as follows:

“(i) The number of refugees placed (by county of placement).”;

(C) by amending subparagraph (E)(ii) to read as follows:

“(ii) A best estimate of the proportion of refugees placed by the agency in the previous year who are receiving cash or medical assistance described in subsection (e).”; and

(D) by adding after subparagraph (E) the following new subparagraph:

(F) To submit audited annual financial statements to the Secretary of State, including a schedule of revenue and expenditures under reception and placement grants, attesting—

“(i) that the Federal funds provided under the grant or contract are accounted for,

“(ii) that such funds have been expended in accordance with the terms of the grant or contract,

“(iii) to administrative and service costs incurred by the agency, and

“(iv) to the amount of funds not expended.

Such statements shall be audited in accordance with generally accepted government auditing standards.”.

(2) Section 412(b) is further amended by adding after paragraph (6) (as redesignated by subsection (a)) the following new paragraph:

“(7) Any subrecipient of at least \$100,000 of assistance awarded to an agency described in paragraph (1) shall submit to the Federal agency administering such paragraph the documentation described in paragraph (6)(F).”.

SEC. 8. TRANSFER OF RESPONSIBILITY FOR POLICY OF INITIAL PLACEMENT.

(a) **IN GENERAL.**—Section 412(a)(2) (8 U.S.C. 1522(a)(2)) is amended—

(1) in subparagraph (A), by striking out "Director" and all that follows through "Coordinator," and inserting in lieu thereof "Coordinator, together with the Director and the Federal agency administering subsection (b)(1),";

(2) in subparagraph (B), by striking out "Director" and inserting in lieu thereof "Coordinator";

(3) in subparagraph (C), by striking out "and except" and all that follows through "recognize,"; and

(4) in clause (i) of such subparagraph, by striking out "by the Director" and inserting in lieu thereof "by the Coordinator".

(b) **CONFORMING AMENDMENT.**—Section 412(b)(8)(E) (8 U.S.C. 1522(b)(8)(E)) is amended by striking out "Director" and inserting in lieu thereof "Coordinator".

SEC. 9. REPORTING REQUIREMENT.

Not later than 18 months after the date of enactment of this Act, the Director of the Office of Refugee Resettlement shall prepare and transmit to the Judiciary Committees of the Congress a report discussing the potential viability of a refugee assistance program under section 412(e) of the Immigration and Nationality Act which would consist solely of the provision of "Refugee Cash Assistance" and "Refugee Medical Assistance".

SEC. 10. PILOT PROGRAM TO REDUCE WELFARE DEPENDENCY AMONG REFUGEES.

(a) **IN GENERAL.**—The United States Coordinator for Refugee Affairs (hereafter in this section referred to as the "Coordinator") shall develop and conduct a pilot program, in accordance with this section, to decrease welfare dependency among designated refugees through encouragement of resettlement in communities described in subsection (b).

(b) **ELIGIBLE COMMUNITIES.**—During fiscal year 1989, the Coordinator, in consultation with the Director of the Office of Refugee Resettlement, shall plan for the resettlement of additional designated refugees in a community—

(1) which is at present participating in the "Planned Secondary Resettlement Program"; or

(2) which is a local community, which has a program similar to the "Planned Secondary Resettlement Program", or which has a small refugee population or a record of particular resettlement success.

(c) **PRIORITY ADMISSIONS.**—During fiscal years 1990 and 1991, the Attorney General and the Secretary of State, in consultation with the Coordinator, shall give priority to—

(1) the admission of designated refugees whose relatives in the United States are not receiving public assistance; and

(2) the admission of designated refugees whose relatives in the United States—

(A) were recently or currently receiving public assistance;

(B) previously lived in States with large refugee populations or high welfare dependency; and

(C) will have moved to communities described in subsection (b) by the date of admission of the designated refugees.

(d) **REPORTING REQUIREMENT.**—Not later than 90 days before the date of termination of the program, the Coordinator shall prepare and transmit to the Committees on the Judiciary of the Senate and House of Representatives a report describing the results of the program and recommending whether or not the program should be continued.

(e) **DEFINITION.**—For the purposes of this section—

(1) the term “designated refugee” means any refugee that the Coordinator determines, on an individual or group basis, would benefit from the Planned Secondary Resettlement Program, or other similar program, except that such term includes refugees whose relatives have exceptionally high welfare dependency rates in the Central Valley of California; and

(2) the term “Planned Secondary Resettlement Program” means the program so designated which was developed by the Director of the Office of Refugee Resettlement.

SEC. 11. IMPLEMENTATION OF PRIVATE SECTOR FUNDING FOR CERTAIN REFUGEES.

(a) **ESTABLISHMENT OF GUIDELINES.**—(1) The United States Coordinator for Refugee Affairs, together with the Secretary of State and the Secretary of Health and Human Services, shall coordinate the issuance of, and shall issue, guidelines for the admission to, and private sponsorship in, the United States of refugees described in paragraph (2).

(2) The refugees referred to in paragraph (1) are individuals who may be admitted to the United States utilizing refugee admissions which are allocated in any fiscal year contingent upon the availability of private sector funding sufficient to cover the essential and reasonable costs of such admissions.

(b) **SPECIFIC GUIDELINES.**—The guidelines described in subsection (a) shall include guidelines governing—

(1) verification of the refugee’s status;

(2) verification of the financial security of the private sponsor; and

(3) the operation of the program described in subsection (a) on a basis which maximizes the likelihood of the refugee’s financial self-sufficiency in the United States.

(c) **DEFINITION.**—For purposes of this section, the term “refugee” means—

(1) a refugee, as defined by section 101(a)(42) of the Immigration and Nationality Act; and

(2) any alien described in section 207(c)(2) of such Act.

VI. SECTION-BY-SECTION ANALYSIS

Section 1

Short title, “Refugee Resettlement Extension Act of 1988.”

Section 2

Reauthorizes for three years (fiscal year 1989 through fiscal year 1991) the domestic resettlement program. This section:

(1) provides “such sums as may be necessary” for reimbursement of state cash and medical assistance costs (as defined in Section 412(e) of the INA),

(2) provides \$80 million for social services to refugees (as defined in Section 412(c)(1) of the INA),

(3) provides \$10 million for medical screening of new refugee arrivals (as defined in Section 412(b)(4) of the INA), and

(4) provides "such sums as may be necessary" for reimbursement of state costs for the incarceration of certain Mariel Cubans (as defined in Section 412(f) of the INA).

Section 3

Clarifies earlier prohibitions on "per capita grant" funding to allow state governments to submit their required reports on state resettlement activities at one time, and in one report, for the purpose of administrative efficiency.

Section 4

Moves up the date that the President is required to present his proposed refugee admission levels from "before the start of each fiscal year" to June 1, in order to coordinate admissions with the budget cycle and provide for more thorough review before the end of the fiscal year.

Section 5

Requires the President, when submitting the proposed number of refugee admissions at the Annual Refugee Consultation, to show where in his budget he has provided for such a level of admissions.

Section 6

Requires the U.S. Coordinator for Refugee Affairs, the Director of the Bureau for Refugee Programs, and the Director of the Office of Refugee Resettlement to consult more formally with state and local governments concerning domestic resettlement policy.

Section 7

Subsection (a) makes a technical change to Section 412(b) of the INA. Subsection (b) relieves the voluntary agencies of certain reporting requirements that the committee understands they do not have the capacity to comply with, and allows private accountants, rather than the GAO, to audit voluntary agency use of federal refugee resettlement funds.

Section 8

Transfers present statutory responsibility for domestic refugee placement policy (described in Section 412(a)(2) of the INA) from the Office of Refugee Resettlement to the U.S. Coordinator for Refugee Affairs.

Section 9

Requires a study from the Office of Refugee Resettlement on the likely results of placing all refugees on programs of Refugee Cash Assistance and Refugee Medical Assistance, instead of continuing present refugee use of Aid to Families with Dependent Children and Medicaid.

Section 10

Requires the development of a three-year pilot program that would encourage refugee self-sufficiency through the granting of priority admission to the overseas relatives of refugees who are not reliant on programs of public assistance, or to refugees who move to areas of low refugee concentration.

Section 11

Requires the U.S. Coordinator for Refugee Affairs and the Secretaries of State and Health and Human Services to publish guidelines for the admission and resettlement of refugees through the "private sector initiative."

VII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1988.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for S. 2605, the Refugee Resettlement Extension Act of 1988, as passed by the Senate Judiciary Committee on July 14, 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2605.
2. Bill title: Refugee Resettlement Extension Act of 1988.
3. Bill status: As passed by the Senate Judiciary Committee on July 14, 1988.
4. Bill purpose: This bill authorizes a three-year extension of current refugee programs and authorizes the Attorney General to reimburse states and counties for costs associated with certain incarcerated Cuban refugees.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Function 600:					
Estimated authorization level:					
Refugee cash, medical and grant assistance	366	399	426		
Stated authorization levels:					
Refugee social services	80	80	80		
State and local medical screening and treatment services	10	10	10		
Authorization levels	456	489	516		
Estimated outlays	292	441	504	183	41

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Function 750:					
Stated authorization level.....	5.4	5.4	5.4		
Estimated outlays.....	5.4	5.4	5.4		
Total cost to the Federal Government:					
Authorization levels.....	461.4	494.4	521.4		
Outlays.....	297.4	446.4	509.4	183	41

Basis of Estimate: This bill would reauthorize the refugee assistance program for 1989 through 1991. Subject to the availability of funds, the federal government may reimburse states for their payments for refugee benefits in the AFDC, SSI, and Medicaid programs for up to three years after the refugee enters the U.S. In addition, the government reimburses states for refugee costs in non-categorical and medical assistance programs in the first 18 months after a refugee enters the U.S. and in general assistance programs after 18 months up to 36 months subject to the availability of funds. In 1988 funds were available for 24 months of reimbursement in the AFDC, SSI, Medicaid, and general assistance programs.

The estimated authorization level for refugee cash, medical and grant assistance is based on projected average benefit levels and on projections of the number of refugees qualified to participate in the various programs. Average costs for cash and medical assistance vary depending on whether the refugee qualifies for AFDC, SSI, non-categorical cash assistance, or for general assistance. The number of eligible refugees is dependent on the number of months of reimbursement available and the number of refugees entering the U.S. each year. Based on the maximum reimbursement period stated in law, the CBO estimate assumes that the maximum 36 months of reimbursement will be available. To illustrate the sensitivity to the reimbursement period, we have also established the authorization assuming a 24 month period. If the period of reimbursement were 24 months, the estimated authorization levels for the program, would be \$294 million in 1989, \$316 million in 1990, and \$332 million in 1991.

The current State Department ceiling on the number of refugees who will be allowed to enter the U.S. in 1988 is 83,500 (the ceiling was raised by 15,000 to its current level on May 20, 1988 by a Presidential Determination). The State Department estimates that 72,000 refugees will enter the U.S. in 1988. There is disagreement within the Administration about the number of refugees entering the U.S. in future years. We assume that 72,000 refugees (the 1988 expected level) will enter in each year from 1989 through 1991. This number could vary depending on political situations around the world. Based on historical data we assume that 54 percent of the eligible population would require some type of assistance.

The cost for targeted assistance is based on the 1988 appropriation and adjusted for inflation. Administrative costs are estimated as 15 percent of expenditures on cash and medical assistance based

on historical experience. The authorization levels for social services and preventive health services are specifically stated in the bill.

The bill requires the United States Coordinator for Refugee Affairs to conduct a pilot program to decrease welfare dependency among designated refugees. This program would be a continuation of the Planned Secondary Resettlement Program which is currently funded out of the Refugee Social Services grant. Based on discussions with officials from the Office of Refugee Resettlement we assume that funding will continue out of the Refugee Social Services grant which is authorized in this bill at \$80 million a year for 1989 through 1991. Spending on the program would be approximately \$1 million in each year.

Estimated outlays for the refugee programs assume full appropriation of authorization levels at the beginning of each fiscal year and a 64 percent spend-out rate in the first year, 28 percent in the second year, and the remainder in the third year. Spend-out rates are based on historical experience in the refugee program.

The bill authorizes \$5.4 million a year from 1989 through 1991 for the Attorney General to reimburse states and counties for costs associated with incarcerated Cuban refugees who were admitted to the United States in 1980 and are jailed in state and county prisons. We assume full appropriation of this authorization level. Based on the historical spend-out rates for this program we assume all funds are spent in the year of authorization.

6. Estimated cost to State and local government: Assuming full appropriation of the authorizations, this bill would reimburse state and local governments \$297.4 million in 1989, \$446.4 million in 1990, \$509.4 in 1991, \$183 million in 1991, and \$41 million in 1993. These reimbursements would arise from direct payments to state and local governments for cash and medical assistance and for costs of incarceration of some Cuban nationals. Reimbursements would also occur from grants to states for social services, preventive health services, and targeted assistance.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 27, 1988 CBO prepared an estimate of S. 2605. The July 27 estimate did not take into account the May 20, 1988 Presidential Determination that raised the refugee ceiling for 1988. This revised estimate factors the raised limit into its authorization and outlay estimates. Also, the original estimate contained an error in the table on the first page. The estimated authorization level for refugee cash, medical and grant assistance for 1991 should have read \$408 million rather than \$388 million as was stated in the estimate. The rest of the numbers in the table were correct as stated.

9. Estimate prepared by: Richard Curley.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have direct regulatory impact.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph (12) of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2605 are as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

As Amended through March 1, 1987

(Act of June 27, 1952; 66 Stat. 163; 8 U.S.C. 1101 et seq.)

WITH AMENDMENTS AND NOTES ON RELATED LAWS

* * * * *

TITLE II

CHAPTER 1—SELECTION SYSTEM

* * * * *

ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES

SEC. 207. [8 U.S.C. 1157] * * *

(d)(1) Before the start of each fiscal year, *but not later than June 1*, the President shall report to the Committee on the Judiciary of the House of Representatives and of the Senate regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year. The President shall provide for periodic discussions between designated representatives of the President and members of such committees regarding changes in the worldwide refugee situation, the progress of refugee admissions, and the possible need for adjustments in the allocation of admissions among refugees.

* * * * *

(e) For purposes of this section, the term "appropriate consultation" means, with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information:

- (1) A description of the nature of the refugee situation.
- (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.

(3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and **[resettlement]** *resettlement, including, if necessary, a recommendation for any change in budget authority for the respective fiscal year necessary to cover the estimated refugee admissions for that fiscal year.*

(4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.

(5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.

(6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.

(7) Such additional information as may be appropriate or requested by such members.

To the extent possible, information described in this subsection shall be provided at least two weeks in advance of discussions in person by designated representatives of the President with such members.

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TITLE IV—MISCELLANEOUS AND REFUGEE ASSISTANCE

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CHAPTER 2—REFUGEE ASSISTANCE

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AUTHORIZATION FOR PROGRAMS FOR DOMESTIC RESETTLEMENT OF AND ASSISTANCE TO REFUGEES

SEC. 412. [8 U.S.C. 1522] (a) CONDITIONS AND CONSIDERATIONS.—
* * *

(2)(A) The **[Director and the Federal agency administering subsection (b)(1), together with the Coordinator,]** *Coordinator, together with the Director and the Federal agency administering subsection (b)(1),* shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities, *and funding policies and procedures, both current and anticipated. Such regular consultation shall include meetings at which State and local governments and private nonprofit voluntary agencies are jointly represented and at which recommendations for the refugee program are considered.*

(B) The **[Director]** *Coordinator* shall develop and implement, in consultation with representatives of voluntary agencies and State and local governments, policies and strategies for the placement and resettlement of refugees within the United States.

(C) Such policies and strategies, to the extent practicable **[and except under such unusual circumstances as the Director may recognize],** shall—

(i) insure that a refugee is not initially placed or resettled in an area highly impacted (as determined under regulations pre-

scribed [by the Director] *by the Coordinator* after consultation with such agencies and governments) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, son, or daughter residing in that area,

(ii) provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly (not less often than quarterly) meet with representatives of State and local governments to plan and coordinate in advance of their arrival the appropriate placement of refugees among the various States and localities, and

(iii) take into account—

(I) the proportion of refugees and comparable entrants in the population in the area,

(II) the availability of employment opportunities, affordable housing, and public and private resources (including educational, health care, and mental health services) for refugees in the area,

(III) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance, and

(IV) the secondary migration of refugees to and from the area that is likely to occur.

* * * *

(4)(A) * * *

[(B) No] *(B)(i) Subject to clause (ii), no funds may be made available under this chapter (other than under subsection (b)(1)) to States or political subdivisions in the form of block grants, per capita grants, or similar consolidated grants or contracts. Such funds shall be made available under separate grants or contracts—*

[(i)] *(I) for medical screening and initial medical treatment under subsection (b)(5),*

[(ii)] *(II) for services for refugees under subsection (c)(1),*

[(iii)] *(III) for targeted assistance project grants under subsection (c)(2), and*

[(iv)] *(IV) for assistance for refugee children under subsection (d)(2).*

(ii) Nothing in clause (i) may be construed as prohibiting any State from submitting a single grant proposal to cover programs within the State funded under this chapter or from establishing reporting deadlines on a concurrent basis for those programs or as prohibiting any other consolidation of administrative procedures relating to funding of programs under this chapter. To the maximum extent practicable, the Director shall permit the States to consolidate such administrative procedures.

* * * *

(b) PROGRAM OF INITIAL RESETTLEMENT.—(1)(A) [For—

[(i) fiscal years 1980 and 1981, the Secretary of State is authorized, and

[(ii) fiscal year 1982 and succeeding fiscal years, the Director (except as provided in subparagraph (B)) is authorized, to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including initial reception and

placement with sponsors) of refugees in the United States.] *For each fiscal year the Director (except as provided in subparagraph (B)) is authorized to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including the initial resettlement and placement with sponsors) of refugees in the United States.* Grants to, or contracts with, private nonprofit voluntary agencies under this paragraph shall be made consistent with the objectives of this chapter, taking into account the different resettlement approaches and practices of such agencies. Resettlement assistance under this paragraph shall be provided in coordination with the Director's provision of other assistance under this chapter. Funds provided to agencies under such grants and contracts may only be obligated or expended during the fiscal year in which they are provided (or the subsequent fiscal year or such subsequent fiscal period as the Federal contracting agency may approve) to carry out the purposes of this subsection.

(B) If the President determines that the Director should not administer the program under this paragraph, the authority of the Director under the first sentence of subparagraph (A) shall be exercised by such officer as the President shall from time to time specify.

* * * * *

[(6) The Comptroller General shall directly conduct an annual financial audit of funds expended under each grant or contract made under paragraph (1) for fiscal year 1986 and for fiscal year 1987.]

[(7)] (6) Each grant or contract with an agency under paragraph (1) shall require the agency to do the following:

(A) To provide quarterly performance [and financial status] reports to the Federal agency administering paragraph (1).

(B)(i) To provide, directly or through its local affiliate, notice to the appropriate county or other local welfare office at the time that the agency becomes aware that a refugee is offered employment and to provide notice to the refugee that such notice has been provided, and

(ii) upon request of such a welfare office to which a refugee has applied for cash assistance, to furnish that office with documentation respecting any cash or other resources provided directly by the agency to the refugee under this subsection.

(C) To assure that refugees, known to the agency as having been identified pursuant to paragraph (4)(B) as having medical conditions affecting the public health and requiring treatment, report to the appropriate county or other health agency upon their resettlement in an area.

(D) To fulfill its responsibility to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee resettled and to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan.

(E) To transmit to the Federal agency administering paragraph (1) an annual report describing the following:

(i) The number of refugees placed (by county of placement) [and the expenditures made in the year under the grant or contract, including the proportion of such expenditures used for administrative purposes and for provision of services].

[(ii) The proportion of refugees placed by the agency in the previous year who are receiving cash or medical assistance described in subsection (e).]

(ii) *A best estimate of the proportion of refugees placed by the agency in the previous year who are receiving cash or medical assistance described in subsection (e).*

(iii) The efforts made by the agency to monitor placement of the refugees and the activities of local affiliates of the agency.

(iv) The extent to which the agency has coordinated its activities with local service providers in a manner which avoids duplication of activities and has provided notices to local welfare offices and the reporting of medical conditions of certain aliens to local health departments in accordance with subparagraphs (B)(i) and (C).

(v) Such other information as the agency administering paragraph (1) deems to be appropriate in monitoring the effectiveness of agencies in carrying out their functions under such grants and contracts.

(F) *To submit audited annual financial statements to the Secretary of State, including a schedule of revenue and expenditures under reception and placement grants, attesting—*

(i) *that the Federal funds provided under the grant or contract are accounted for,*

(ii) *that such funds have been expended in accordance with the terms of the grant or contract,*

(iii) *to administrative and service costs incurred by the agency, and*

(iv) *to the amount of funds not expended. Such statements shall be audited in accordance with generally accepted government auditing standards.*

The agency administering paragraph (1) shall promptly forward a copy of each annual report transmitted under subparagraph (E) to the Committees on the Judiciary of the House of Representatives and of the Senate,

(7) *Any subrecipient of at least \$100,000 of assistance awarded to an agency described in paragraph (1) shall submit to the Federal agency administering such paragraph the documentation described in paragraph (6)(F).*

(8) The Federal agency administering paragraph (1) shall establish criteria for the performance of agencies under grants and contracts under that paragraph, and shall include criteria relating to an agency's—

(A) efforts to reduce welfare dependency among refugees resettled by that agency,

(B) collection of travel loans made to refugees resettled by that agency for travel to the United States,

(C) arranging for effective local sponsorship and other non-public assistance for refugees resettled by that agency,

(D) cooperation with refugee mutual assistance associations, local social service providers, health agencies, and welfare offices,

(E) compliance with the guidelines established by the [Director] Coordinator for the placement and resettlement of refugees within the United States, and

(F) compliance with other requirements contained in the grant or contract, including the reporting and other requirements under [subsection (b)(7)] paragraph (6).

The Federal administering agency shall use the criteria in the process of awarding or renewing grants and contracts under paragraph (1).

* * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 414. [8 U.S.C. 1524] (a)(1) There are hereby authorized to be appropriated for each of [fiscal years 1987 and 1988] *fiscal years 1989, 1990, and 1991* such sums as may be necessary for the purpose of carrying out the provisions (other than those described in paragraphs (2) through (5)) of this chapter.

(2) There are hereby authorized to be appropriated [for fiscal year 1987 \$74,783,000 and for fiscal year 1988 \$77,924,000] *for each of fiscal years 1989, 1990, and 1991, \$80,000,000* for the purpose of providing services with respect to refugees under section 412(c)(1).

(3) There are hereby authorized to be appropriated [for fiscal year 1987 \$8,761,000 and for fiscal year 1988 \$9,125,000] *for each of fiscal years 1989, 1990, and 1991, \$10,000,000* for the purpose of carrying out section 412(b)(5).

(4) There are authorized to be appropriated [for fiscal year 1987, \$5,215,000 and for fiscal year 1988 \$5,434,000] *for each of fiscal years 1989, 1990, and 1991, such sums as may be necessary* for the purpose of carrying out the provisions of section 412(f).

(b) The authority to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.